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VOLUME I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941 1942

No. 78 4

THE UNITED STATES OF AMERICA, PETITIONER

vs.

WILLIAM R. JOHNSON

No. 89 5

THE UNITED STATES OF AMERICA, PETITIONER

vs.

JACK SOMMERS, JAMES A. HARTIGAN, JOHN M.
FLANAGAN, ET AL.

ON WRITS OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR HABEAS CORPUS FILED DECEMBER 12, 1941
HABEAS CORPUS GRANTED FEBRUARY 2, 1942

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

7500

vs.

WILLIAM R. JOHNSON,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

7501

vs.

JACK SOMMERS, JAMES A. HARTIGAN, JOHN M.
FLANAGAN, WILLIAM P. KELLY AND STUART
SOLOMON BROWN,
Defendants-Appellants.

Appeal from the District Court of the United States for
the Northern District of Illinois, Eastern Division.

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(III)

1 IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

Placita.

Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the division and district aforesaid on the first Monday of March (it being the twenty-ninth day of March the indictment was filed) in the year of our Lord One Thousand Nine Hundred and Forty and of the Independence of the United States of America the 165th year.

Present: The Honorable Charles E. Woodward, The Honorable Michael L. Igoe, The Honorable John P. Barnes, The Honorable William H. Holly, being judges of said Court.

The Honorable John P. Barnes, Trial Judge.
William H. McDonnell, U. S. Marshal.
Hoyt King, Clerk.

<sup>Filed
May 27,
1940.</sup> 2 And on, to wit, the 29th day of March A. D. 1940 came the defendants by their attorneys and filed in the Clerk's office of said Court certain INDICTMENT in words and figures following, to wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division

Of the March Term, in the year 1940.

32168.

Count One.

Northern District of Illinois, }
Eastern Division. } ss.

The Grand Jurors for the United States of America duly empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the December Term of said Court in the year 1939, having begun but not finished during said December Term of Court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this Court in and for said division and district during the February and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term of Court, pursuant to request of the United States Attorney and upon motion of the Grand Jury, and inquiring for said division and district at the March Term of said Court in the year 1940, upon their oaths do present and charge that:

William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, hereinafter in this indictment sometimes called the defendant, whose full and true name other than as herein stated is unknown to the Grand Jurors, heretofore, on, to wit, the 15th day of March, 1937, at Chicago aforesaid, in the division and district aforesaid, and within the jurisdiction of this Court, unlawfully did wilfully and knowingly attempt to defeat and evade a large part, to wit,

4 \$313,401.32 of a tax upon his net income for the calendar year 1936, which said tax was imposed by an Act

of Congress approved June 22, 1936, which Act is known as the Revenue Act of 1936, which said unlawful and wilful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

(1) That the said defendant during the calendar year 1936, and at all times herein mentioned, was an individual, a citizen of the United States, who was unmarried and who had no dependents, and whose legal residence and principal place of business were at Chicago aforesaid, within the division and district aforesaid, and within the First United States Internal Revenue Collection District of Illinois, and who was then and there a person required by law, after the close of the said calendar year 1936, and on or before March 15, 1937, to make to the Collector of Internal Revenue for said Collection District, under oath, a return for the calendar year 1936, stating specifically the items of his gross income and the deductions and credits allowed by Title I (Income Tax) of the said Act of Congress, by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that the regular accounting period of the defendant was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that during the said calendar year the said defendant derived and had and received a gross income amounting to more than \$5,000.00, to wit, \$607,399.48, derived as follows, that is to say:

Interest on bank deposits, etc.	\$ 2,111.85
Rents and Royalties	16,189.03
Income from business	589,098.60

Total	\$607,399.48
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5 and that during the said calendar year the said defendant was entitled to and allowed by the provisions of said Title I of said Act of Congress, deductions in the sum of, to wit, \$1,573.84 and no more, on account of the following:

Interest paid	\$1,500.00
Taxes paid	73.84

Total	\$1,573.84
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and that he, the said defendant, had and derived and received a net income, to wit, the gross income less the deductions allowed by law of, to wit, \$605,825.64, upon which

said net income of said defendant for said calendar year an income tax of, to wit, \$385,316.67 under the Act of Congress aforesaid, became and was due by him on, to wit, March 15, 1937, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said Collector of Internal Revenue aforesaid;

(2) That the said defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid, by reason of the said tax imposed by the aforesaid Act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year were as aforesaid, did, on, to wit, March 15, 1937, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, \$313,401.32 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully and knowingly attempting to defeat and evade the said tax did, on, to wit, March 12, 1937, at Chicago aforesaid, in the division

and judicial district aforesaid, make under his oath an
6 income tax return for said calendar year and thereafter on, to wit, March 15, 1937 did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year to have been the sum of \$163,466.58 and no more, derived as follows:

Interest on bank deposits, etc.	\$ 2,111.85
Rents and Royalties	16,189.03
Net income from business	145,165.70
Total	\$163,466.58

and stating specifically the items of deduction allowed by the Act of Congress aforesaid for said calendar year 1936 to have been the sum of \$1,573.84 on account of the following:

Interest paid	\$1,500.00
Taxes paid	73.84
Total	\$1,573.84

and stating therein no other items of deduction, and stating specifically the net income, to wit, the said gross income

less the said deductions allowed by law for said calendar year to have been the sum of \$161,892.74 and no more, and showing the total tax due and payable by him thereon to have been \$71,915.35 and no more;

And the said defendant then and there on, to wit, March 15, 1937, paid to the Collector of Internal Revenue for the said Internal Revenue Collection District of Illinois, the sum of, to wit, \$17,978.84, and thereafter the further sum of \$54,661.44, and furthermore, the said defendant has never made and filed with the said Collector of Internal Revenue any other income tax return for the said calendar year stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said Collector or to any other proper officer of the United States of any sums of money on account of his said tax debt for said calendar year except the sums aforesaid;

And as a further means of so unlawfully, wilfully and knowingly attempting to evade and defeat said tax of, to wit, \$313,401.32 for the said calendar year 1936, he, the said defendant, William R. Johnson, with aliases as aforesaid, well knowing all the premises aforesaid, did conceal and cause to be concealed from any and all proper officers of the United States, his gross and net incomes aforesaid, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof;

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present that heretofore, to wit, during the calendar year 1936 and up to and including March 15, 1937, and continuously thereafter up to and including the date of the filing of this indictment, in the Northern District of Illinois and within the First Internal Revenue Collection District of the United States for the State of Illinois, and within the jurisdiction of this Court, William R. Skidmore, alias W. R. Skidmore, alias Billy Skidmore; William Goldstein, alias Bill Goldstein; Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton; Jack Sommers, alias J. Sommers; Edward Wait, alias Ed. Wait; James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart; John M. Flanagan, alias J. Flanagan; Orrie Alexander; William P. Kelly, alias Bill Kelly; Reginald E. Mackay, alias Reg. Mackay; Stuart Solomon Brown, alias S. S. Brown; Bernice Downey, defendants herein, well knowing all the premises aforesaid, did unlaw-

fully, feloniously, wilfully and knowingly aid, abet, conceal, induce, and procure the said defendant William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately \$313,401.32 upon his, the said William R. Johnson's net income for the said calendar year 1936, by the means and in the manner aforesaid, which tax was imposed by the Act of Congress aforesaid known as the Revenue Act of 1936;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Section 143 (b), Revenue Act of 1936 (U. S. C., Title 26, Sec. 145).)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, hereinafter sometimes called the defendant, whose full and true name other than as herein stated is unknown to the Grand Jurors, heretofore, on, to wit, the 15th day of March, 1938, at Chicago aforesaid, in the Division and District aforesaid, and within the jurisdiction of this Court, unlawfully did wilfully and knowingly attempt to defeat and evade a large part, to wit, \$460,234.59 of a tax upon his net income for the calendar year 1937, which said tax was imposed by an Act of Congress approved June 22, 1936, which Act is known as the Revenue Act of 1936, which said unlawful and wilful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

1) That the said defendant during the calendar year 1937, and at all times herein mentioned, was an individual, a citizen of the United States, who was unmarried and who had no dependents and whose legal residence and principal place of business were at Chicago aforesaid, within the Division and District aforesaid, and within the First United States Internal Revenue Collection District of Illinois, and who was then and there a person required by law, after the close of the said calendar year 1937, and on or before March 15, 1938, to make the Collector of Internal Revenue for said Collection District, under oath, a return for
10 the calendar year 1937, stating specifically the items of his gross income and the deductions and credits al-

lowed by Title I (Income Tax) of the said Act of Congress, by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that the regular accounting period of the defendant, was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the act, which the said Grand Jurors upon their oaths charge to be a fact, that during the said calendar year the said defendant derived and had and received a gross income amounting to more than \$5,000.00, to wit, \$880,949.94, derived as follows, that is to say:

Interest on bank deposits, etc.	\$ 2,065.00
Rents and Royalties	17,461.63
Income from business	887,446.72
Farm operating loss (Red Figure)	(26,023.41)

Total gross income	\$880,949.94
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and that during the said calendar year the said defendant was entitled to and allowed by the provisions of said Title I of said Act of Congress, deductions in the sum of, to wit, \$83.74, and no more, on account of the following:

Contributions	\$25.00
Taxes paid	58.74

Total	\$83.74
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and that he, the said defendant, had and derived and received a net income, to wit, the gross income less the deductions allowed by law of, to wit, \$880,866.20, upon which said net income of said defendant for said calendar year an income tax of, to wit, \$588,634.31 under the Act of 11 Congress aforesaid, became and was due by him, on, to wit, March 15, 1938, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said Collector of Internal Revenue aforesaid;

2) That the said defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid, by reason of the said tax imposed by the aforesaid Act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year were as aforesaid, did, on to wit, March 15, 1938, at Chicago aforesaid, in the Division and judicial District aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, \$460,234.59 of the

said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully and knowingly attempting to defeat and evade the said tax, did, on to wit, March 14, 1938, at Chicago aforesaid, in the Division and judicial District aforesaid, make under his oath an income tax return for said calendar year, and thereafter on, to wit, March 15, 1938, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the calendar year, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year to have been the sum of \$248,743.92 and no more, derived as follows:

Interest on bank deposits, etc.	\$ 2,065.00
Rents and Royalties	17,461.63
Income from business	255,240.70
Farm operating loss (Red figure)	(26,023.41)

Total gross income	<u>\$248,743.92</u>
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12 and stating specifically the items of deduction allowed by the Act of Congress aforesaid for said calendar year 1937 to have been the sum of \$83.74 on account of the following:

Contributions	\$25.00
Taxes paid	58.74

Total	<u>\$83.74</u>
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and stating therein no other items of deduction, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year to have been the sum of \$248,660.18 and no more, and showing the total tax due and payable by him thereon to have been \$128,399.72 and no more;

And the said defendant then and there, on, to wit, March 15, 1938, paid to the Collector of Internal Revenue for the said Internal Revenue Collection District of Illinois, the sum of, to wit, \$32,099.93, and thereafter the further sum of \$96,299.79, and furthermore, the said defendant has never made and filed with the said Collector of Internal Revenue any other income tax return for the said calendar year, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said Collector or to any other proper officer of the United States of any sums

of money on account of his said tax debt for said calendar year except the sums aforesaid;

And as a further means of so unlawfully, wilfully and knowingly attempting to evade and defeat said tax of, to wit, \$460,234.59 for the said calendar year 1937, he, the said defendant, William R. Johnson, with aliases as aforesaid, well knowing all the premises aforesaid, did conceal and cause to be concealed from any and all proper officers of the United States his gross and net income aforesaid, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof;

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that heretofore, to wit, during the calendar year 1937 and up to and including March 15, 1938, and continuously thereafter up to and including the date of the filing of this indictment, in the Northern District of Illinois and within the First Internal Revenue Collection District of the United States for the State of Illinois, and within the jurisdiction of this Court William R. Skidmore, alias W. R. Skidmore, alias Billy Skidmore; William Goldstein, alias Bill Goldstein; Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton; Jack Sommers, alias J. Sommers; Edward Wait, alias Ed. Wait; James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart; John M. Flanagan, alias J. Flanagan, Orrie Alexander; William P. Kelly, alias Bill Kelly; 14 Reginald E. Mackay, alias Reg. Mackay; Stuart Solomon Brown, alias S. S. Brown; Bernice Downey, defendants herein, well knowing all the premises aforesaid, did unlawfully, feloniously, wilfully, and knowingly aid, abet, conceal, induce, and procure the defendant William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid, of, to wit, approximately \$460,234.59 upon his, the said William R. Johnson's net income for the said calendar year 1937, by the means and in the manner aforesaid, which tax was imposed by the Act of Congress aforesaid, known as the Revenue Act of 1936; Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Section 145 (b), Revenue Act of 1936 (U. S. C., Title 26, Sec. 145).)

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, hereinafter sometimes called the defendant, whose full and true name other than as herein stated is unknown to the Grand Jurors, heretofore, on, to wit, the 15th day of March, 1939, at Chicago aforesaid, in the Division and District aforesaid, and within the jurisdiction of this Court, unlawfully did wilfully and knowingly attempt to defeat and evade a large part, to wit, \$614,764.07 of a tax upon his net income for the calendar year 1938, which said tax was imposed by an Act of Congress approved by operation of law May 27, 1938, which Act is known as the Revenue Act of 1938, which said unlawful and willful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

(1) That the said defendant during the calendar year 1938, and at all times herein mentioned, was an individual, a citizen of the United States, who was unmarried and who had no dependents, and whose legal residence and principal place of business were at Chicago aforesaid, within the Division and District aforesaid, and within the First United States Internal Revenue Collection District of Illinois, and who was then and there a person required by law, after the close of the said calendar year 1938, and on or before March 15, 1939, to make to the Collector of Internal Revenue for said Collection District, under oath, a return for the calendar year 1938, stating specifically the items of his gross

16 income and the deductions and credits allowed by Title I (Income Tax) of the said Act of Congress, by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that the regular accounting period of the defendant was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that during the said calendar year the said defendant derived and had and received a gross income amounting to more than \$5,000.00, to wit, \$959,908.28, derived as follows, that is to say:

Interest	\$ 1,318.90
Rents and Royalties	20,328.18
Income from business	960,675.62
Farm operating loss (Red)	(22,414.42)

Total

\$959,908.28

and that during the said calendar year the said defendant was entitled to and allowed by the provisions of Title I of said Act of Congress, deductions in the sum of, to wit, \$551.68 and no more, on account of the following:

Contributions	\$500.00
Taxes paid	51.68
Total	<u>\$561.68</u>

and that he, the said defendant, had and derived and received a net income, to wit, the gross income less the deductions allowed by law of, to wit, \$959,356.60, upon which said net income of said defendant for said calendar year an income tax of, to wit, \$649,295.01 under the Act of Congress aforesaid became and was due by him, on to wit, March 15, 1939, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said Collector of Internal Revenue aforesaid;

(2) That the said defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid, by reason of the said tax imposed by the aforesaid Act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year were as aforesaid, did, on, to wit, March 15, 1939, at Chicago aforesaid, in the Division and judicial District aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, \$614,764.07 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully, and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 4th, 1939, at Chicago aforesaid, in the Division and judicial District aforesaid, make under his oath an income tax return for said calendar year and thereafter, on, to wit, March 15, 1939, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year to have been the sum of \$102,498.36, and no more, derived as follows:

Interest	\$ 1,318.90
Rents and Royalties	20,328.18
Income from business	103,265.70
Farm operations loss (Red Figure)	<u>(22,414.42)</u>
Total	\$ 102,498.36

and stating specifically the items of deduction allowed by the Act of Congress aforesaid for said calendar year 18 1938 to have been the sum of \$551.68 on account of the following:

Contributions	\$500.00
Taxes	51.68

Total

\$ 551.68

and stating therein no other items of deduction, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year to have been the sum of \$101,946.68 and no more, and showing the total tax due and payable by him thereon to have been \$34,530.94 and no more;

And the said defendant then and there, on, to wit, March 15, 1939, paid to the Collector of Internal Revenue for the said Internal Revenue Collection District of Illinois, the sum of, to wit, \$8,632.73, and thereafter the further sum of \$25,898.21, and furthermore, the said defendant has never made and filed with the said Collector of Internal Revenue any other income tax return for the said calendar year, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said Collector or to any other proper officer of the United States of any sum of money on account of his said tax debt for said calendar year except the sums aforesaid:

And the Grand Jurors aforesaid, upon their oaths aforesaid do further present that heretofore, to wit, during the calendar year 1938 and up to and including March 15, 1939, and continuously thereafter up to and including the date of the filing of this indictment, in the Northern District of Illinois and within the First Internal Revenue Collection District of the United States for the State of Illinois, and within the jurisdiction of this Court, William R. Skid-
19 more, alias W. R. Skidmore, alias Billy Skidmore;

William Goldstein, alias Bill Goldstein; Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton; Jack Sommers, alias J. Sommers; Edward Wait, alias Ed. Wait; James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart; John M. Flanagan, alias J. Flanagan, Orrie Alexander, William P. Kelly, alias Bill Kelly; Reginald E. Mackay, alias Reg. Mackay; Stuart Solomon Brown, alias S. S. Brown; Bernice Downey defendants herein, well knowing all the premises aforesaid,

did unlawfully, feloniously, wilfully, and knowingly aid, abet, conceal, induce, and procure the defendant William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately \$614,-
 20 764.07 upon his, the said William R. Johnson's net income for the said calendar year 1938, by the means and in the manner aforesaid, which tax was imposed by the Act of Congress aforesaid known as the Revenue Act of 1938;

And as a further means of so unlawfully, wilfully, and knowingly attempting to evade and defeat said tax of, to wit, \$614,764.07 for the said calendar year 1938, he, the said defendant, William R. Johnson, well knowing all the premises aforesaid, did conceal and cause to be concealed from any and all proper officers of the United States his gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Section 145 (b), Revenue Act of 1928 (U. S. C., Title 26, Sec. 145)).

21

Fourth Count.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and charge: That William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, hereinafter sometimes called the defendant, whose full and true name other than as herein stated is unknown to the Grand Jurors, heretofore, on, to wit, the 15th day of March, 1940, at Chicago aforesaid, in the Division and District aforesaid, and within the jurisdiction of this Court, unlawfully did wilfully and knowingly attempt to defeat and evade a large part, to wit, \$497,744.33 of a tax upon his net income for the calendar year 1939, which said tax was imposed by an Act of Congress approved by operation of law May 27, 1938, as amended, which Act is known as the Revenue Act of 1938, as amended, which said unlawful and willful attempt to defeat and evade said tax was by the means and in the manner following, that is to say:

(1) That the said defendant during the calendar year 1939 and at all times herein mentioned, was an individual, a citizen of the United States, who was unmarried and who had no dependents, and whose legal residence and

principal place of business were at Chicago aforesaid, within the Division and District aforesaid, and within the First United States Internal Revenue Collection District of Illinois, and who was then and there a person required

by law, after the close of the said calendar year 1939, 22 and on or before March 15, 1940, to make to the Collector of Internal Revenue for said Collection District, under oath, a return for the calendar year 1939, stating specifically the items of his gross income and the deductions and credits allowed by Title I (Income Tax) of the said Act of Congress, by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that the regular accounting period of the defendant was on the basis of the calendar year and not on the basis of a fiscal year, and by reason of the fact, which the said Grand Jurors upon their oaths charge to be a fact, that during the said calendar year the said defendant derived and had and received a gross income amounting to more than \$5,000.00, to wit, \$932,571.96, derived as follows, that is to say:

Interest	\$ 1,222.38
Rents and Royalties	18,239.61
Farm operating loss (Red)	23,441.46
Income from business	936,551.43

Total	\$932,571.96
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and that during the said calendar year the said defendant was entitled to and allowed by the provisions of Title I of said Act of Congress, deductions in the sum of, to wit, \$1005.06, and no more, on account of the following:

Accounting Expense	\$ 950.00
Taxes paid	55.06

Total	\$1,005.06
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and that he, the said defendant, had and derived and received a net income, to wit, the gross income less the 23 deductions allowed by law of, towit, \$931,566.90, upon which said net income of said defendant for said calendar year an income tax of, towit, \$628,174.85, under the Act of Congress aforesaid, became and were due by him, on, towit, March 15, 1940, to the United States of America, one-fourth of the amount of which at least should then and there have been paid by the said defendant to the said Collector of Internal Revenue aforesaid;

(2) That the defendant, well knowing the premises aforesaid, and being indebted to the United States of America in the amount aforesaid, by reason of the said tax imposed by the aforesaid Act of Congress, and then and there well knowing that the gross income and the net income derived and had and received by him during the said calendar year were as aforesaid, did, on, to wit, March 15, 1940, at Chicago aforesaid, in the Division and judicial District aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part to wit, \$497,744.33 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully, and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 4, 1940, at Chicago aforesaid, in the Division and judicial District aforesaid, make under his oath an income tax return for said calendar year and thereafter on, to wit, March 15, 1940, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year, prepared and sworn to as aforesaid, stating specifically therein the items of his gross income for said calendar year to have been the sum of \$252,720.53, and no more, derived as follows:

24 Interest	\$ 1,222.38
Income from business	256,710.00
Rents and Royalties	18,239.61
Farm operations loss (Red Figure)	23,441.46

Total	\$252,720.53
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and stating specifically the items of deduction allowed by the Act of Congress aforesaid for said calendar year 1939 to have been the sum of \$1,005.06 on account of the following:

Accounting Expense	\$ 950.00
Taxes	55.06

Total	\$1,005.06
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and stating therein no other items of deduction, and stating specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year to have been the sum of \$251,715.47, and no more, and showing the total tax due and payable by him thereon to have been \$130,430.52, and no more:

And the said defendant then and there, on, to wit, March 15, 1940, paid to the Collector of Internal Revenue for the

said Internal Revenue Collection District of Illinois, the sum of, to wit, \$32,607.63, and furthermore, the said defendant has never made and filed with the said Collector of Internal Revenue any other income tax return for the said calendar year, stating specifically the items of his gross income and the deductions and credits allowed by law, and has never made any other payment or payments to said
25 Collector or to any other proper officer of the United States of any sum of money on account of his said tax debt for said calendar year except the sum aforesaid:

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that heretofore, to wit, during the calendar year 1939 and up to and including March 15, 1940, and continuously thereafter up to and including the date of the filing of this indictment, in the Northern District of Illinois and within the First Internal Revenue Collection District of the United States for the State of Illinois, and within the jurisdiction of this Court, William R. Skidmore, alias W. R. Skidmore, alias Billy Skidmore; William Goldstein, alias Bill Goldstein; Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton; Jack Sommers, alias J. Sommers; Edward Wait, alias Ed. Wait; James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart; John M. Flanagan, alias J. Flanagan; Orrie Alexander; William P. Kelly; Reginald E. Mackay, alias Reg Mackay; Stuart Solomon Brown, Bernice
26 Downey, defendants herein, well knowing all the premises aforesaid, did unlawfully, feloniously, wilfully, and knowingly aid, abet, conceal, induce and procure the defendant William R. Johnson, with aliases as aforesaid, unlawfully, feloniously, wilfully and knowingly to, attempt in the manner aforesaid to evade and defeat the income tax aforesaid, of, to wit, approximately \$497,744.33 upon his, the said William R. Johnson's net income for the said calendar year 1939, by the means and in the manner aforesaid, which tax was imposed by the Act of Congress aforesaid, known as the Revenue Act of 1938, as amended:

And as a further means of so unlawfully, wilfully and knowingly attempting to evade and defeat said tax of, to wit, \$497,744.33 for the said calendar year 1939, he, the said defendant, William R. Johnson, well knowing all the premises aforesaid, did conceal and cause to be concealed from any and all proper officers of the United States his gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Section 145(b) Revenue Act of 1938 (U. S. C. Title 26, Sec. 145).)

27

Fifth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that William R. Johnson, alias W. R. Johnson, alias Bill Johnson. William R. Skidmore, alias W. R. Skidmore, alias Billy Skidmore, William Goldstein, alias Bill Goldstein, Andrew J. Creighton, alias A. J. Creighton, alias "Red" Creighton, Jack Sommers, alias J. Sommers, Edward Wait, alias Ed Wait, James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart, John M. Flanagan, alias J. Flanagan, Orrie Alexander, William P. Kelly, alias Bill Kelly, Reginald E. McKay, alias Reg Mackay, Stuart Solomon Brown, alias S. S. Brown, and Bernice Downey, hereinafter called defendants, throughout and at various times and during the period of time extending from on or about January 1, 1936, and for a long time prior thereto, up to and including the date of the filing of this indictment, in the City of Chicago, State and Northern Judicial District of Illinois, and within the jurisdiction of this Court, unlawfully, wilfully, knowingly and feloniously, did conspire, combine, confederate and agree together and with each other, and among themselves, and with divers other persons to the Grand Jurors unknown, to defraud the United States of America of income taxes which should become due from the defendant, William R. Johnson, and which did in fact become due to the United States of America from the said defendant, William R. Johnson, for the calendar years 1936, 1937, 1938 and 1939, in the aggregate amount of, to wit, approximately \$1,886,144.31 which said unlawful and felonious conspiracy, combination confederation and agreement was then and there a continuing one for defrauding the United States of America of income taxes which should become due and which did in fact become due under the circumstances, by means and methods and in the manner following, that is to say:

Each and every of the allegations contained in the paragraphs designated (1) (extending to but not including

paragraph designated (a) of the first four counts of this indictment, inclusive, is hereby incorporated by reference and by such reference is hereby re-alleged in this count with the same force and effect as though in this count set forth in full.

That the said defendant, William R. Johnson, during the years 1936, 1937, 1938 and 1939, and for a long time prior thereto, was engaged in an enterprise commonly known as the gambling business and was also engaged in other enterprises incidental and related to said gambling business the true and exact nature and extent of which, except as herein stated, are to the Grand Jurors unknown:

That the said defendants, then and there well knowing and anticipating all the premises as aforesaid, in
29 order to deceive such Internal Revenue Officers and employees of the United States as should be charged with the assessment and collection of the taxes imposed upon the net income of William R. Johnson, as aforesaid, and such officers and employees of the United States as should be authorized and required to examine and audit the account books and records of the said William R. Johnson and of his gambling enterprises or businesses and with checking and verifying the income tax returns of said William R. Johnson for the certain calendar years 1936, 1937, 1938, 1939 to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, as required by law, and in order to prepare the way for making false and fraudulent returns to the said Collector for said calendar years, showing greatly less income taxes due from the said William R. Johnson for the said calendar years, and for failing to pay to the said Collector, in accordance with such false and fraudulent returns the true and correct taxes on the net income of the said William R. Johnson, and thereby to defraud the United States of America of large parts of said true and correct income taxes would, according to said unlawful conspiracy, combination, confederation and agreement, do, among other things the following:

It was a part of the said conspiracy that the said defendants, well knowing the premises aforesaid, would conceal from any and all Internal Revenue Officers the investment participation and true ownership of the said William R. Johnson in divers gambling businesses and houses and related enterprises in and about Cook County and Chicago,

Illinois, some of the said gambling houses being commonly known as

- 30 The Horse-Shoe Club
 The Casino Club
 The Dev-Lin
 The Lincoln Tavern
 The Harlem Stables
 The House of Niles
 The D. & D. Club
 The Bon-Air Casino
 The Villa Moderne
 The 4020 Club
 The Southland Club
 The Western Club
 The Select Club
 The Mayfair Club
 The Northland Club
 The Club Proviso
 The 4011 Club
 2135 Lake Park Club
 The Harlem Club
 The 11901 Vincennes Club
 The 406 Club

and other gambling establishments located at, to wit,

- 3332 N. Milwaukee Avenue
 3946 School Street
 2133 S. Kedzie Boulevard
 3209 W. Ogden Avenue

and divers other gambling establishments, the exact names or addresses of which are to the Grand Jurors unknown:

It was a further part of the said conspiracy that the said defendants, other than the said William R. Johnson, William R. Skidmore, William Goldstein, Stuart S. Brown, and Bernice Downey, well knowing all the premises aforesaid, would open, maintain, and operate, and would cause

to be opened, maintained and operated for the financial
 31 benefit of said William R. Johnson, but under names other than Johnson's, said gambling enterprises or houses last aforesaid, and would thereby conceal and cause to be concealed from any and all Internal Revenue Officers the true ownership of the said William R. Johnson thereof;

It was a further part of the said conspiracy that the said defendants would open, maintain, and operate, and would cause to be opened, maintained, and operated divers

currency exchanges, and in particular, the Lawrence Avenue Currency Exchange in the City of Chicago, for the purpose of furnishing banking facilities to the defendant Johnson and the aforesaid gambling houses, so as to enable the said defendant Johnson to conceal from any and all Internal Revenue Officers his financial interest in and net taxable income from the aforesaid gambling enterprises or houses;

It was a further part of the said conspiracy that the defendants through the aforesaid Currency Exchanges and divers other places would cause all of the profit and income from the aforesaid gambling establishments to be converted into currency in such a manner as to conceal the source, ownership and disposition thereof, and to prevent the making of any record thereof, and thereby prevent the agents and officers of the United States from establishing the true gross and net incomes derived and had from the aforesaid gambling establishments to the use and benefit of the said defendant Johnson; and would conceal and destroy any and all records of the said currency exchanges to prevent their discovery and examination by officers and agents of the United States;

It was a further part of the said conspiracy that the said defendants would acquire, maintain, and operate, and would cause to be maintained and operated, a building, in such a manner and under such circumstances as to conceal the fact that said building was the headquarters for said gambling enterprises, and in particular, the fact that said building houses the central point from which certain information relating to horse races and race tracks was transmitted by electrical device, that is to say, by telephone and teletype, to the aforesaid gambling houses;

And the said defendants, well knowing all the premises aforesaid, and as a further part of said conspiracy, would file and cause to be filed with the said Collector of Internal Revenue for the said First Internal Revenue Collection District of Illinois income tax returns for the said respective calendar years 1936 to 1938, both years inclusive, for the said defendant, William R. Johnson, as an individual, which said income tax returns would contain false and fraudulent statements and items pertaining to the income of the said William R. Johnson, especially to the source of income from gambling enterprises or houses as aforesaid, and would thereby show on said returns a much less net income for each of said calendar

years than in truth and in fact the said William R. Johnson would and did have for each of said calendar years, and, thereby, a much less income tax due by the said William R. Johnson to the United States of America, as aforesaid, and specifically would file and cause to be filed income tax returns for the said William R. Johnson for each of said calendar years showing gross income, deductions, net income, the source thereof, and tax due as follows, to wit:

33 For the year 1936:

Interest on bank deposits, etc.	\$ 2,111.85
Rents and royalties	16,189.03
Net income from business	145,165.70

Total gross income\$163,466.58

and stating specifically the items of deduction allowed by the said Revenue Act of 1936 for said calendar year 1936 to have been the sum of \$1,573.84 on account of the following:

Interest paid	\$1,500.00
Taxes paid	73.84

Total Deductions\$1,573.84

and stating therein no other items of deductions, and showing specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1936 to have been the sum of \$161,892.74, and showing the total tax due and payable thereon by the said defendant William R. Johnson for the said calendar year 1936, after allowance of all credits, to have been the sum of \$71,915.35 and no more;

For the year 1937:

Interest on bank deposits, etc.	\$ 2,065.00
Rents and royalties	17,461.63
Income from business	255,240.70
Farm operating loss (red figure)	(26,023.41)

Total Gross Income\$248,743.92

and stating specifically the items of deduction allowed by the said Revenue Act of 1936 for said calendar year 1937 to have been the sum of \$83.74 on account of the following:

Contributions	\$25.00
Taxes paid	58.74

Total Deductions\$83.74

34 and stating therein no other items of deductions and showing specifically the net income, to wit, the said gross income less the said total deductions allowed by law, for said calendar year 1937, to have been the sum of \$248,660.18, and showing the total tax due and payable thereon by the said defendant William R. Johnson, for said calendar year 1937, after the allowance of all credits, to have been the sum of \$128,399.72, and no more; and

For the year 1938:

Interest on bank deposits, etc.	\$ 1,318.90
Rents and royalties	20,328.18
Income from business	103,265.70
Farm operating loss (red figure)	(22,414.42)

Total Gross Income	\$102,498.36
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and stating specifically the items of deductions allowed by the said Revenue Act of 1938 for said calendar year 1938 to have been the sum of \$551.68 on account of the following:

Contributions	\$500.00
Taxes	51.68

Total Deductions	\$551.68
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and stating therein no other items of deductions and showing specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1938, to have been the sum of \$101,945.68, and showing the total tax due and payable by the said defendant William R. Johnson for the said calendar year 1938, after the allowance of all credits, to have been the sum of \$34,530.94, and no more;

35 For the year 1939:

Interest on bank deposits, etc.	\$ 1,222.38
Rents and royalties	18,239.61
Income from business	256,710.00
Farm operating loss (red figure)	23,441.46

Total gross income	\$252,720.53
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and stating specifically the items of deductions allowed by the said Revenue Act of 1938 for said calendar year

1939 to have been the sum of \$1005.06 on account of the following:

Taxes	\$ 55.06
Accounting expenses	950.00
Total deductions	<u>\$1,005.06</u>

and stating therein no other items of deductions and showing specifically the net income, to wit, the said gross income less the said deductions allowed by law for said calendar year 1939, to have been the sum of \$251,715.47, and showing the total tax due and payable by the said defendant William R. Johnson for the said calendar year 1939, after the allowance of all credits, to have been the sum of \$130,430.52, and no more;

Whereby, and by virtue of which said conspiracy, and in the manner and means aforesaid, the United States of America would be defrauded of income taxes due and to become due from the defendant William R. Johnson in the sum of, to wit, approximately \$1,856,144.31;

And the Grand Jurors upon their oaths and affirmations aforesaid, do further present and charge that, in pursuance of said unlawful and felonious conspiracy, combination, confederation and agreement, and to effect the objects of the same, the said defendants, well knowing all the facts aforesaid, at Chicago and divers other places,
 36 at various times during the period of time herein mentioned, did do certain acts, among others, to effectuate said conspiracy, that is to say,

Overt Acts.

1. That on, to wit, March 12, 1937, at, to wit, Chicago, Illinois, the said defendant William R. Johnson affixed his signature to his income tax return for the calendar year 1938, and did thereafter, on, to wit, March 15, 1937, file and cause to be filed said return with said Collector of Internal Revenue at Chicago, Illinois;

2. That on, to wit, March 15, 1938, at, to wit, Chicago, Illinois, the said defendant William R. Johnson affixed his signature to his income tax return for the calendar year 1937, and did thereafter, on, to wit, March 15, 1939, file and cause to be filed said return with said Collector of Internal Revenue at Chicago, Illinois;

3. That on, to wit, March 15, 1939, at, to wit, Chicago, Illinois, the said defendant William R. Johnson affixed his signature to his income tax return for the calendar year 1938, and did thereafter, on, to wit, March 15, 1939, file and cause to be filed said return with said Collector of Internal Revenue at Chicago, Illinois;

4. That on, to wit, March 15, 1940, at, to wit, Chicago, Illinois, the said defendant William R. Johnson affixed his signature to his income tax return for the calendar year 1939, and did thereafter, on, to wit, March 15, 1940, file and cause to be filed said return with said Collector of Internal Revenue at Chicago, Illinois;

37 5. That on, to wit, March 27, 1939, at, to wit, Chicago, Illinois, the said defendant William R. Johnson made a statement to certain Internal Revenue Officers, to wit, L. H. Wilson and Frank J. Clifford;

6. The said defendants Stuart S. Brown and Bernice Downey, on or about July 20, 1938, at Chicago, Illinois, commenced the operation of a currency exchange business known as The Lawrence Avenue Currency Exchange;

7. That on or about October 1, 1939 the said defendant Stuart S. Brown burned or otherwise destroyed certain records of said currency exchange business pertaining to the income, receipts, and disbursements of the aforesaid gambling business;

8. That on or about November 1, 1939, the said defendant Stuart S. Brown fled from Chicago, Illinois;

9. That on or about January 6, 1936, at Chicago, Illinois, the defendant Jack Sommers cashed certain checks at The Northern Trust Company of Chicago;

10. At divers times during the years 1935, 1936, 1937 and 1938 the defendant Jack Sommers managed and operated the Horshoe gambling casino at Chicago, Illinois;

11. At divers times during the years 1938 and 1939 the defendant Jack Sommers cashed checks at the said Lawrence Avenue Currency Exchange in Chicago, Illinois;

12. At divers times during the year 1938 and 1939 the defendant James A. Hartigan cashed checks at the said Lawrence Avenue Currency Exchange in Chicago, Illinois;

13. At divers times during the years 1938 and 1939 the said defendant William P. Kelly sent checks to the Lawrence Avenue Currency Exchange in Chicago, Illinois.

38 14. During the years 1937, 1938 and 1939, the defendant Creighton managed the Club Southland at

6245 Cottage Grove Avenue, Chicago, Illinois;

15. On or about November 15, 1939, the defendant Bernice Downey removed the books and records of the said Lawrence Avenue Currency Exchange;

16. On or about August 1, 1939, the defendant Ed Wait visited the said Lawrence Avenue Currency Exchange in Chicago, Illinois;

17. During the calendar year 1936 the defendant John M. Flanagan managed a gambling casino at 4020 Ogden Avenue, Chicago, Illinois;

18. During the month of December, 1936, the defendant John M. Flanagan cashed certain checks in the aggregate amount of \$8200 at the Lawndale Currency Exchange in Chicago, Illinois;

19. On or about January 13, 1940, the defendant William Goldstein went to the Lawrence Avenue National Bank Building at 3424 Lawrence Avenue, Chicago, Illinois;

20. At divers times during the years 1938 and 1939, the defendant Andrew J. Creighton sent checks to the said Lawrence Avenue Currency Exchange;

Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

William J. Campbell,
United States Attorney.

39 Endorsed: No. 32168. United States District Court, Northern District of Illinois, Eastern Division. The United States of America *vs.* William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey. Indictment. Vio: Sec. 145 (B) Revenue Acts of 1936 and 1938 (U. S. C. Title 26, Sec. 145) (Attempting to evade and defeat income tax) and Sec. 88, Title 18 United States Code (Conspiracy).

A true bill,

Dorothy Walton Binder,
Foreman.

Filed in open court this 29th day of March, A. D. 1940.

Hoyt King,
Clerk.

Entered
April 5,
1940.

40) And afterwards, to wit, on the 5th day of April, A. D. 1940, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

41 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Friday, April 5, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

United States of America,

vs.

William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, Bernice Downey.	}	No. 32168.
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This day again comes the United States by the United States Attorney come also the defendants William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan and Orrie Alexander, William P. Kelly, Stuart Solomon Brown, and Bernice Downey in their own proper person and being arraigned upon the indictment filed herein against them each defendant pleads not guilty thereto and it is

Ordered this cause be and the same is hereby continued to April 12, A. D. 1940, to be set for trial.

On motion of attorney for the defendant Reginald E. Mackay it is ordered this cause be and the same is hereby continued to April 12, A. D. 1940 for plea as to said defendant and to be set for trial.

42 And afterwards, to wit, on the 16th day of May, A. D. 1940, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered
May 16,
1940.

43 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

Thursday, May 16, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day comes the United States by the United States Attorney come also the defendants William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Stuart Solomon Brown and Bernice Downey, in their own proper persons and on motion of attorneys for the defendants William R. Johnson and William R. Skidmore it is

Ordered that leave be and the same is hereby given said defendants to withdraw their pleas of not guilty heretofore entered and leave be and the same is hereby given said defendants to file instanter motions to quash indictment and without prejudice to said motions to quash, leave to file demurrers to said indictment instanter, on motion of attorney for the defendant William Goldstein it is ordered that leave be and the same is hereby given said defendant to withdraw his plea of not guilty and to file a plea in abatement and without prejudice to said plea in abatement a demurrer to said indictment instanter and on motion of attorneys for defendants Andrew J. Creighton, Jack Sommers, Edward Wait, James E. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Stuart Solomon Brown, Reginald Mackay and Bernice Downey it is

Ordered that leave be and the same is hereby given
44 said defendants to withdraw their pleas of not guilty heretofore entered and leave be and the same is hereby given them to file pleas of the statute of limitations as to count 1 of the indictment, pleas in abatement and without prejudice to said pleas of the statute of limitations and pleas in abatement, demurrers to indictment instanter and

leave be and the same is hereby given the said defendants to file instanter briefs in support of their motions, pleas and demurrers.

Filed
May 16,
1940.

45 And on, to wit, the 16th day of May, A. D. 1940, came the defendant by his attorneys and filed in the Clerk's office of said Court certain Motion to Quash Indictment in words and figures following, to wit:

46 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—32168) * *

MOTION OF DEFENDANT, WILLIAM R. JOHNSON,
TO QUASH INDICTMENT.

I.

Now comes the defendant, William R. Johnson, by George F. Callaghan, his attorney, and moves the Court to quash the indictment, and each count thereof, for the following reasons:

A. The indictment is void in that it was returned at the March Term of this Court in the year 1940, by a Grand Jury impanelled and sworn at the December Term of said Court in the year 1939, and which Grand Jury was sitting illegally and without warrant or authority of law at said March, 1940, Term of Court, that is to say:

(a) The order of Court, entered February 28, 1940, purporting and pretending to authorize the continuance of service of said Grand Jury to and including the March, 1940, term of Court, which order is in words and figures:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them,
47 the said Second December, 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished

during the said February 1940 Term of Court; and the Court being fully advised in the premises,

"It Is Therefore Ordered That the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations."

is void and illegal and the said Court had no power, warrant or authority of law to enter said order, in that Section 421 of Title 28, U. S. C. A., only permitted the Court to continue the service of the said Grand Jury solely to finish investigations begun by the said Grand Jury at the December 1939 Term of Court, and not finished by them at said Term.

(b) The said Section 421 does and did not permit the Court to continue the service of the said Grand Jury to finish investigation begun by them at the February 1940 term of Court, and not finished by them at said term.

(c) The petition of the Grand Jury filed on February 28, 1940, praying for an order extending and continuing the service to and including the March 1940 term of Court, which petition is in words and figures:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, the Second December 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court,

to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Term of this Court, and which said investigations cannot be finished during the said February 1940 Term of said Court.

Dorothy Walton Binder,
Forewoman, Second December Term.
A. D. 1939 Grand Jury."

is void, illegal and unauthorized, so that no valid order of Court can or could be entered thereon for the reason that the said petition prayed to have its term of service continued to and including the March 1940 Term of Court for the purpose of finishing investigations begun but not finished at the February 1940 Term of Court.

B. The two orders of this Court pretending and purporting to authorize the December 1939 Term Grand Jury to sit during the February 1940 and March 1940 Terms of Court respectively, do not disclose that this indictment was the result of an investigation begun but not finished during said December 1939 Term, or that any investigation was begun but not finished during said December 1939 Term.

C. The indictment does not show that the investigations alleged to have been begun but not finished during the December 1939 Term were not completed in the December 1939 Term.

II.

And the said defendant, by his said attorney, further moves the Court to quash the fourth and fifth counts of the indictment, for the following reasons:

49 A. None of the matters therein alleged with respect to the said defendant wilfully and knowingly attempting to evade and defeat a tax upon his net income for the calendar year of 1939 were presented to the said Grand Jury at the December 1939 Term of Court, and no investigation of the said matters was begun at the December 1939 Term of Court.

B. The said matters described in the preceding paragraph were first presented to the said Grand Jury at the March 1940 Term of Court and the investigation of said matters was first begun at said March 1940 Term of Court, in violation and contravention of Section 421, Title 28, U. S. C. A.

III.

And the said defendant, by his said attorney, further moves the Court to quash the first, second and third counts of the indictment, for the following reasons:

A. On March 1, 1940, the said December 1939 Grand Jury returned an indictment against this defendant, William R. Johnson, in a case entitled United States of America *vs.* William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, which case bears criminal general #32127; that the said indictment charges the said defendant with the same crimes, matters and violations of statutes as are contained in the first, second and third counts of the instant and present indictment; that the

matters contained in the first, second and third counts of the present and instant indictment were finished and concluded at the February 1940 Term of the said Grand Jury; that the said Grand Jury had no power or authority to investigate the said matters at the March 1940 Term of said Grand Jury.

50 Wherefore, for the foregoing reasons, the defendant says that the said indictment, and each count thereof, is void and of no lawful effect to confer jurisdiction upon this Court to try this defendant, wherefore, he prays the judgment of the Court here that said indictment, and each count thereof, be quashed, and that he may have leave to depart hence without day.

(Sgd) William R. Johnson,
Defendant.

(Sgd) George F. Callaghan,
His Attorney.

State of Illinois }
County of Cook } ss.

William R. Johnson, being first duly sworn on his oath deposes and says, that he has read the foregoing Motion to Quash by him subscribed and that the allegations of fact therein contained are true.

(Sgd) William R. Johnson.

Subscribed and Sworn to before me this 15 day of May,
A. D. 1940.

(Seal) Kathryn G. Lanahan,
Notary Public.

51 I, George F. Callaghan, do hereby certify that I am a member of the bar of the District Court of the United States for the Northern District of Illinois, Eastern Division, and that I am attorney for the said defendant above named; that I have read the indictment against the said defendant and the respective orders referred to in this Motion to Quash; that from such examination I am of the opinion that the foregoing Motion to Quash is well founded in fact and in law, and I do further certify that the said Motion to Quash is not interposed for the purpose of delay.

(Sgd) George F. Callaghan.

<sup>Filed
May 16,
1940.</sup> 52 And on, to wit, the 16th day of May, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court certain Plea in Abatement in the Nature of a Motion to Quash in words and figures following, to wit:

53 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

PLEA IN ABATEMENT IN THE NATURE OF A
MOTION TO QUASH, OF THE DEFENDANTS
THEREIN NAMED.

Now come the defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, by their attorneys, and move the Court to quash and abate the indictment herein, and each count thereof, and as grounds therefor, state:

I.

The indictment is void in that it was returned at the March, 1940 Term of this Court by a Grand Jury empaneled and sworn at the December, 1939 Term of Court, which Grand Jury was sitting illegally and without authority of law during said March, 1940 Term, for the reasons:

(a) The order of Court entered February 28, 1940, purporting to authorize the continuance of service of said Grand Jury during the March, 1940 Term, which order is in words and figures, to-wit:

“Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, the
54 said Second December, 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this

Court, and which said investigations cannot be finished during the said February 1940 Term of Court; and the Court being fully advised in the premises,

"It Is Therefore Ordered That the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations,"

is void and illegal and was entered without authority of law in that Section 421 of Title 28, U. S. C. A., only authorized the entry of an order to continue the service of the Grand Jury solely to finish investigations begun by the said Grand Jury during the December, 1939 Term of Court, but not finished by them during said Term.

(b) The said Section 421 does not and did not authorize the Court to continue the service of said Grand Jury to finish investigations begun by them at the February, 1940 Term and not finished by them during said Term.

(c) The petition of the said Grand Jury filed February 28, 1940, pursuant to which the aforesaid order was entered purporting to continue the service of said Grand Jury including the March, 1940 Term, and which petition is in words and figures as follows, to-wit:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, 55 the Second December 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Term of this Court, and which said investigations cannot be finished during the said February 1940 Term of said Court.

Dorothy Walton Binder,
*Forewoman, Second December Term,
A. D. 1939 Grand Jury."*

is void, illegal and unauthorized, so that no valid order of Court can or could be entered thereon for the reason that said petition prayed to have its term of service continued to and including the March, 1940 Term of Court for the purpose of finishing investigations begun but not finished at the February, 1940 Term of Court.

II.

(a) The orders purporting to authorize the December, 1939 Grand Jury to sit during the February, 1940 and the March, 1940 Terms of Court respectively, do not disclose that the indictment herein was the result of any investigation begun but not finished during the December, 1939 Term, or that any investigation of a subject germane to this indictment was begun during the December, 1939 Term.

(b) The indictment does not show that investigations alleged to have begun in the December, 1939 Term of said Grand Jury were not completed during said term.

III.

And the said defendants, by their attorneys, further move the Court to quash Counts Fourth and Fifth of the indictment, for the following reasons:

56 (a) None of the matters therein alleged with respect to the said defendant wilfully and knowingly attempting to evade and defeat a tax upon his net income for the calendar year of 1939 were presented to the said Grand Jury at the December, 1939 Term of Court, and no investigations of the said matters were begun at the December, 1939 Term of Court.

(b) The said matters described in the preceding paragraph were first presented to the said Grand Jury at the March, 1940 Term of Court and the investigations of said matters were first begun at said March, 1940 Term of Court, in violation and contravention of Section 421, Title 28, U. S. C. A.

IV.

And the said defendants, by their attorneys, further move the Court to abate and quash the First, Second and Third Counts of said indictment for the following reasons:

(a) That on March 1, 1940, defendant, William R. Johnson, was indicted by said December, 1939 Grand Jury and said indictment was returned in this Court and is known as No. 32127. By the allegations thereof said William R. Johnson is charged with the same offenses respectively as those charged in the First, Second and Third Counts of this indictment, so that any investigations which said Grand Jury might have begun with respect to the alleged attempt

to evade and defeat income taxes by said William R. Johnson were completed upon the return of said indictment, which was during the February, 1940 Term of said Grand Jury, and that said Grand Jury had no further power or authority to thereafter continue such investigations.

57 Wherefore, for the foregoing reasons, the defendants herein say that said indictment, and each count thereof, is void and of no lawful effect, and pray the judgment of this Court that said indictment, and each count thereof, be abated and quashed, and these defendants have leave to depart hence without day.

Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
Orrie Alexander,
William P. Kelly,
Reginald E. Mackay,
Bernice Downey,
By Edward J. Hess,
Their Attorney.

Stuart Solomon Brown,
By Edw. J. Hess &
E. A. Fisher,
His Attorneys.

58 And on, to wit, the 16th day of May, A. D. 1940 came the defendants by their attorney and filed in the Clerk's office of said Court Special Plea in Bar as to Count One (Statute of Limitations) in words and figures following, to wit:

Filed
May 16,
1940.

59 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—32168) * *

**SPECIAL PLEA IN BAR AS TO COUNT ONE
(STATUTE OF LIMITATIONS).**

Now come the defendants, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, jointly and severally by

their respective attorneys and plea specially to Count One of said indictment and say that the United States ought not to prosecute further said Count as to these defendants, or either of them, because the indictment in which said Count One is included was not found within three (3) years next after the offenses, if any, charged in said Count, are alleged to have been committed as required by the Statute of Limitations applicable to such alleged offenses; that these defendants, and each of them, were not during any of said period from and after the alleged commission of offenses charged to them, absent from the district wherein said alleged offenses were committed; that these defendants, and each of them, were not during of the period from and after the date of the alleged commission of the alleged offenses charged to them in said Count, fugitives from justice, and that no complaint has been instituted before a Commissioner of the United States charging
60 these defendants, or either of them, with the commission of the alleged offenses laid to their charge in said Count One, and this the said defendants are ready to verify.

Wherefore, the aforesaid defendants, and each of them, pray the Court to quash, dismiss and abate Count One of said indictment as to them and as to each of them.

William R. Skidmore,

By Wm. W. Smith,

His Counsel.

William Goldstein,

By Leslie E. Salter,

His Counsel.

Andrew J. Creighton,

Jack Sommers,

Edward Wait,

James A. Hartigan,

John M. Flanagan,

Orrie Alexander,

William P. Kelly,

Reginald E. Mackay,

Bernice Downey,

By Edward J. Hess,

Their Counsel.

Stuart Solomon Brown,

By Edw. J. Hess and

E. A. Fisher,

His Counsel.

63 And on, to wit, the 16th day of May, A. D. 1940
came William R. Johnson by his attorneys and filed
in the Clerk's office of said Court Demurrer to Indictment
in words and figures following, to wit:

Filed
May 16,
1940.

64 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.

* * (Caption—32168) * *

DEMURRER OF DEFENDANT, WILLIAM R.
JOHNSON, TO INDICTMENT.

Now comes the defendant, William R. Johnson, impleaded, in his own proper person, and by George F. Callaghan, his attorney, and having heard said indictment read, says, as to said indictment, and each count thereof, that the matters therein contained, in manner and form as therein set forth, are not sufficient in law, and that the defendant is not bound in law to answer the same, and this the defendant is ready to verify.

Wherefore, for want of a sufficient indictment in this behalf, the defendant prays judgment and that by the Court he may be dismissed and discharged from said premises in said indictment specified.

And for further cause of demurrer to said indictment, this defendant shows to the Court here, the following, to wit:

65 1. Each of the first four counts of the indictment is duplicitous in that several separate and distinct offenses, requiring a different kind and character of proof, are attempted to be charged therein, that is to say:

(a) It is charged or attempted to be charged in each of said counts that the defendant, William R. Johnson, did on a day certain wilfully attempt to defeat and evade a tax upon his income and each of said counts also charges or attempts to charge that said offenses were continuing offenses beginning prior to said day certain and continuing to the date of the return of the indictment.

(b) In each of said counts, the persons charged as aiders and abettors are charged with other and different offenses than the defendant charged as principal.

(c) In each of said counts, the persons charged as aiders and abettors are charged with the commission of

offenses at other and different times than the defendant charged as principal.

(d) In each of said counts, the aiders and abettors are charged with committing two substantive offenses; that of aiding and abetting the principal defendant, and with being accessories after the fact, for each of which offenses, there is a different and separate penalty.

(e) In each of said counts, this defendant is charged or attempted to be charged with a wilfull attempt to defeat and evade a tax and each of said counts also charges (1) the filing of a false income tax return (2) the wilfull failure to supply information for the purposes of the computation, assessment, or collection of any tax (3) the wilfull failure to make a return as to certain items of income.

66 2. The indictment and each count thereof does not sufficiently aver and show that the December Term 1939 Grand Jury was lawfully authorized to continue its investigation beyond said term.

3. The allegations of the counts one, two, three and four of the indictment are inconsistent and repugnant in that there is charged therein a continuing offense both prior to and beyond the period alleged as the completion of the offense charged to the principal.

4. The said indictment does not, nor does any count thereof, inform this defendant of the nature and cause of his accusation, with the certainty required by law.

5. The said indictment does not, nor does any count thereof, charge or aver the commission of acts by this defendant, constituting any offense against any statute of the United States with the certainty required by law.

6. The said indictment and each count thereof, is vague, indefinite and uncertain and, therefore, insufficient, for that the said indictment, or any count thereof, does not sufficiently aver or charge the elements or the supposed crime or offense therein attempted to be charged and it is impossible for this defendant to prepare a defense thereto.

7. The allegations of the indictment, and of each count thereof are so uncertain and indefinite that they violate the requirements of the Sixth Amendment to the Constitution of the United States of America.

8. The second, third, fourth and fifth counts fail to set forth the organization of the Grand Jury, the impanelling of the Grand Jury, venue and the term of service of the Grand Jury, and that the indictment was returned within the term of service of the said Grand Jury.

67 And the defendant says that the said indictment, for the reasons above stated, is insufficient, uncertain, and informal, and, in other particulars, void, and of no lawful effect to confer jurisdiction upon the Court to try this defendant, wherefore he prays judgment of the Court here that said indictment be quashed and that he may leave to depart hence without day.

(sgd) William R. Johnson,
Defendant.

By (sgd) George F. Callaghan,
His Attorney.

I, George F. Callaghan, do hereby certify that I am a member of the bar of the District Court of the United States for the Northern District of Illinois, Eastern Division, and that I am attorney for the said defendant above named, and that I have read the indictment against the said defendant; that from such examination I am of the opinion that the foregoing demurrer is well founded in fact and in law, and I do further certify that said demurrer is not interposed for delay.

(Sgd) George F. Callaghan.

68 And on, to wit, the 16th day of May, A. D. 1940 came the defendants by their attorneys and filed in the Clerk's office of said Court Joint and Several Demurrer to Indictment in words and figures following, to wit:

Filed
May 16,
1940.

69 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

THE JOINT AND SEVERAL DEMURRER OF DEFENDANTS ANDREW J. CREIGHTON, JACK SOMMERS, EDWARD WAIT, JAMES A. HARTIGAN, JOHN M. FLANAGAN, ORRIE ALEXANDER, WILLIAM P. KELLY, REGINALD E. MACKAY, STUART SOLOMON BROWN, AND BERNICE DOWNEY.

And now come the above-named defendants, jointly and severally by their respective counsel, and file this their demurrer to the indictment herein, and for grounds of demurrer, say:

1. The indictment, and each count thereof is vague and indefinite;

2. The indictment, and each count thereof, fails to apprise these defendants of the charges which they are called upon to meet;

3. The indictment, and each count thereof, fails to allege that the same was returned by a lawful Grand Jury;

4. The indictment purports to have been returned by a Grand Jury of this Court empaneled for the December, A. D., 1939 Term, and "having continued to sit by order of this Court . . . during the February and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term," without alleging that the subjectmatter of the indictment herein made up any of said unfinished investigations;

5. That said indictment, and each count thereof, fails to allege the continuance of said Grand Jury by order of Court made within the December, A. D., 1939 Term thereof;

6. That said indictment, and each count thereof, fails to allege that said Grand Jury was continued to the March, 1940 Term by order of Court entered during the February, 1940 Term thereof;

70 7. That said indictment, and particularly the Second, Third, Fourth and Fifth Counts thereof, fail entirely to allege the authority by which the December, 1939, Grand Jury of this Court returned said indictment in the March, 1940 Term thereof;

8. That said indictment, and particularly the first four counts thereof, are duplicitous;

9. That Count One of said indictment in substance charges co-defendant, William R. Johnson, with having attempted to evade and defeat certain income taxes on, to-wit, March 15, 1937, and thereafter charges these demurrants with,

(a) having aided and abetted the said attempted evasion of income taxes during the calendar year of 1936 and up to and including March 15, 1937; and

(b) continuously thereafter up to and including the date of the filing of the indictment (March 29, 1940);

10. That Count Second of said indictment in substance charges co-defendant, William R. Johnson, with having attempted to evade and defeat certain income taxes on, to-wit, March 15, 1938, and thereafter charges these demurrants with,

(a) having aided and abetted the said attempted evasion

of income taxes during the calendar year of 1937 and up to and including March 15, 1938; and

(b) continuously thereafter up to and including the date of the filing of the indictment (March 29, 1940);

11. That Count Third of said indictment in substance charges co-defendant, William R. Johnson, with having attempted to evade and defeat certain income taxes on, to-wit, March 15, 1939, and thereafter charges these demurrants with,

(a) having aided and abetted the said attempted evasion of income taxes during the calendar year of 1938 and up to and including March 15, 1939; and

(b) continuously thereafter up to and including the date of the filing of the indictment (March 29, 1940);

12. That Count Fourth of said indictment in substance charges co-defendant, William R. Johnson, with having attempted to evade and defeat certain income taxes on, to-wit, March 15, 1940, and thereafter charges these demurrants with,

71 (a) having aided and abetted the said attempted evasion of income taxes during the calendar years of 1939 and up to and including March 15, 1940; and

(b) continuously thereafter up to and including the date of the filing of the indictment (March 29, 1940);

13. That said indictment, and particularly the first four counts thereof, is duplicitous in that it attempts to charge these defendants with both the aiding and abetting of an unlawful act, and as being accessories after the fact of the commission of said act, as alleged in paragraphs 9, 10, 11 and 12 hereof;

14. That said indictment, and particularly the first four counts thereof, is inconsistent and repugnant in that in each of said counts a continuing offense is sought to be charged to these defendants beyond the period in which it is alleged that the principal offense of attempting to evade and defeat income taxes was completed;

15. That said indictment, and particularly the first four counts thereof, fails to allege in what particular these defendants, or any of them, aided and abetted defendant, William R. Johnson, to attempt to evade and defeat his income taxes, or were accessories after the fact of such attempted evasion and defeat;

16. That the Fifth Count of said indictment fails to allege facts sufficient to show a continuing conspiracy as

attempted to be alleged, and, if anything, shows and charges a plurality of conspiracies;

17. The Fifth Count of said indictment contains allegations of impertinent, immaterial and scandalous matter;

And for other good and sufficient causes for demurrer appearing on the face of said indictment, and each and every count thereof, these defendants demur and pray the judgment of this Court whether they, or either of them, shall be required to plead thereto.

Andrew J. Creighton,

Jack Sommers,

Edward Wait,

James A. Hartigan,

John M. Flanagan,

Orrie Alexander,

William P. Kelly,

Reginald E. Mackay,

Bernice Downey,

By Edward J. Hess,

Their Attorney.

Stuart Solomon Brown,

By Edw. J. Hess and

E. A. Fisher.

I, Edward J. Hess, attorney for the aforesaid defendants as hereinabove indicated, Do Hereby Certify that in my opinion the aforesaid demurrer is well founded in point of law, and that the same is not interposed for purposes of delay.

Edward J. Hess.

61 And on, to wit, the 21st day of May, A. D. 1940 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court Demurrer to Special Plea in Bar as to Count One (Statute of Limitations) in words and figures following, to wit:

62 IN THE DISTRICT COURT OF THE UNITED STATES
 OF AMERICA.

Filed
May 21,
1940.

• • (Caption—32168) • •

**DEMURRER TO SPECIAL PLEA IN BAR AS TO
COUNT ONE. (STATUTE OF LIMITATIONS.)**

Comes now the plaintiff and demurs to the Special Plea in Bar as to Count One of the indictment and as grounds therefor submits that said Plea is not good as a matter of law.

Respectfully submitted,

William J. Campbell,
William J. Campbell,

per ERC

United States Attorney.

73 And on, to wit, the 21st day of May, A. D. 1940 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court Motion to Strike Pleas in Abatement in words and figures following, to wit:

Filed
May 21,
1940.

74 IN THE DISTRICT COURT OF THE UNITED STATES
 OF AMERICA.

• • (Caption—32168) • •

**MOTION TO STRIKE PLEAS IN ABATEMENT FILED
BY THE DEFENDANTS NAMED HEREIN.**

Comes now the United States of America by William J. Campbell, United States Attorney for the Northern District of Illinois, and moves the Court to strike the Pleas in Abatement filed herein by the defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, to the above numbered indictment, for that:

1. The Pleas, and each of them, do not state facts sufficient to constitute a plea in abatement;
2. The Pleas, and each of them, allege on knowledge facts which the Court will take judicial notice the defend-

ants cannot know and fail to state the sources of information upon which the allegations are founded;

75 3. The Pleas, and each of them, do not state facts sufficient to establish that the defendants, or any of them, are prejudiced by the alleged errors;

4. The Pleas, and each of them, attempt to contradict the respective records, applicable to the above-numbered indictment;

5. The Pleas, and each of them, are insufficient in law;

6. The Pleas, and each of them, are not well taken under the law as made and provided herein.

(Sgd) William G. Campbell,
William G. Campbell,
United States Attorney.

May 21, 1940.

Filed
May 29,
1940.

76 And on, to wit, the 29th day of May A. D. 1940 came the defendants by their attorneys and filed in the Clerk's office of said Court Motion for Rule on Government to Reply in words and figures following, to wit:

77 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

MOTION OF DEFENDANTS FOR RULE ON GOVERNMENT TO REPLY TO DEFENDANTS' PLEAS AND MOTIONS.

Now come the defendants, William R. Skidmore, William R. Johnson, William Goldstein, Andred J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey, by their several and respective counsel, and move the court to require the "United States of America" to answer or reply to the Pleas in abatement and Motions to Quash the indictment heretofore filed by said defendants and each of them, within a short day to be fixed by the court.

(Signed) George F. Callaghan,
(Signed) Wm. W. Smith,
(Signed) Edward J. Hess,
(Signed) Leslie E. Salter,
(Signed) Edward Fisher,
Attorneys for said Defendants.

78 And afterwards, to wit, on the 29th day of May A. D. 1940, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered
May 29,
1940.

79 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption 32168) * *

Wednesday, May 29, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day comes the United States by the United States Attorney come also the defendants by their attorneys and it is

Ordered by the Court that the motion of all defendants for a rule upon the Government to answer or reply to the pleas in abatement and motions to quash heretofore filed by said defendants and to each of them be and the same are hereby denied to which ruling of the Court the defendants by their attorneys duly excepts and it is ordered by the Court the motion of William R. Johnson to quash the indictment be and the same is hereby overruled and denied to which ruling of the Court the defendant by his attorney duly excepts and it is ordered the demurrer of said defendant to the indictment be and the same is hereby overruled to which ruling of the Court the defendant by his attorney duly excepts and it is ordered by the Court the motion of the defendant William R. Skidmore to quash the indictment be and the same is hereby overruled and denied to which ruling of the Court the defendant by his attorney duly excepts and it is ordered the demurrer of the defendant William R. Skidmore to the indictment be and the same is hereby overruled to which ruling of the Court the defendant by his attorney duly excepts it is further ordered the Government's motion to strike plea in abatement filed by defendant William Goldstein be and the same is hereby

80 by granted to which ruling of the Court the defendant by his attorney duly excepts and it is ordered demurrer of said defendant to the indictment be and the same is hereby overruled to which ruling of the Court the defendant by his attorney duly excepts it is further

ordered the motion of the Government to strike pleas in abatement in the nature of a motion to quash filed by the defendants Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey be and the same are hereby granted to which ruling of the Court the said defendants by their attorneys duly except

It is further ordered the joint and several demurrers of the defendants Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey be and the same are hereby overruled to which ruling of the Court the defendants by their attorneys duly except it is further ordered the demurrer of the Government to the special pleas in bar as to count 1 filed by the said defendants be and the same is hereby sustained to which ruling of the Court the defendants by their attorneys duly except and thirty days time from this date is allowed the defendants within which to file bills of exceptions herein it is ordered this cause be and the same is hereby set for plea and arraignment June 4, A. D. 1940.

Entered
June 7,
1940.

81 And afterwards, to wit, on the 4th day of June A. D. 1940, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

82 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

Tuesday June 4, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day comes the United States by the United States Attorney come also the defendants William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey in their own proper persons and being

arraigned upon the indictment filed herein against them each defendant pleads not guilty thereto and it is ordered that defendants file any motions which they may desire to file together with memoranda of authorities in support of said motions on or before June 12, A. D. 1940 and that Government file its briefs in opposition to said motions by June 15, A. D. 1940 12 o'clock noon and hearing on said motions set for June 17, A. D. 1940—10 A. M.

83 And on, to wit, the 12th day of June A. D. 1940 came the defendants by their attorneys and filed in the Clerk's office of said Court Motions for Bill of Particulars in words and figures following, to wit:

Filed
June 12,
1940.

84 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.

• • (Caption—32168) • •

MOTION FOR BILL OF PARTICULARS.

Now comes the defendant, William R. Johnson, by George F. Callaghan, his attorney, and without waiving any of his rights to the exceptions taken to the legal sufficiency and the form of the indictment, and expressly saving and reserving unto himself all said rights, and moves the Court for an order requiring the United States of America to furnish to this defendant a bill of particulars respecting the allegations and charges against this defendant wherewith he is charged in the indictment aforesaid with respect to the matters and things hereinafter more particularly set forth.

Your petitioner shows that he is not advised, is not aware of, and is wholly unable by reason of the vagueness and indefiniteness and the lack of information of the charges laid against him in said indictment, to prepare and defend himself against said indictment and each count thereof, and that unless he be apprised by a bill of particulars of the allegations and charges against him in apt time prior to the trial of said cause, he will suffer irreparable harm and injury, will be subjected to and
85 surprised by evidence sought to be introduced by the United States of America upon the trial of said cause, and will be unable to meet or cope with unex-

pected evidence. The defendant, therefore, files this petition for a bill of particulars as to the following matters alleged in the indictment:

1. State the particulars and an itemization as to the source, time of receipt and amount of all moneys derived, had and received by the defendant Johnson, comprising the figures and amounts charged to be the gross income of the defendant Johnson in each of the counts of the indictment.

2. State the particulars and an itemization as to the source, time of receipt and amount of all moneys derived, had and received by the defendant Johnson, comprising the figures and amounts charged to be the net income of the defendant Johnson in each of the counts of the indictment.

3. State the source and amounts and time of receipt of the item described as "income from business" in each of the first four counts of the indictment.

4. State the source and amounts and time of receipt of the item described as "rents and royalties" in each of the first four counts of the indictment.

5. From what officers of the United States did the defendant Johnson conceal and cause to be concealed his gross and net incomes and the sources thereof, as charged in each count of the indictment?

6. What books and records of the defendant Johnson were concealed and caused to be concealed, as charged in the indictment, and from whom were such books and records concealed?

86 7. State the particulars of the manner and means by which the defendant Johnson was aided and abetted by the other defendants named in the commission of the offenses alleged in the first four counts of the indictment.

8. State the act or acts and the time and place of the commission of any and all acts of the defendants other than the defendant Johnson which constituted the aiding and abetting in the commission of the offenses alleged in the first four counts of the indictment.

9. State whether any means other than those alleged were employed in the commission of the offenses alleged in the first four counts of the indictment.

10. When and where was the conspiracy charged in the fifth count entered into by the defendant Johnson and who were the then members of that conspiracy?

11. State the time when each of the defendants named entered into the alleged conspiracy?

12. What Overt Acts, if any, did the defendant Johnson commit in order to effect the object of the conspiracy charged, together with the dates, the time and place of each act or acts so committed?

13. What is meant and intended by the term "true ownership" as stated in the fifth count of the indictment?

14. Which of the defendants is it intended to be charged "opened and maintained" divers Currency Exchanges as set forth in the fifth count of the indictment?

87 15. Which of the defendants did "acquire, maintain and operate a building as the headquarters for said gambling enterprises" as alleged in the fifth count of the indictment?

Your petitioner further represents that he cannot receive a fair and impartial trial and cannot prepare and submit defenses to each and all of the charges against him unless he is furnished with the information requested in this petition and that he has no means of obtaining such information or any of such information requested in this petition except through and by means of a bill of particulars.

Your petitioner further alleges that unless the prosecution is directed to furnish the particulars specified in this petition, there will be no means available now or hereafter to identify the offenses charged in the indictment and each count thereof and, for want of such means said indictment furnishes no protection to your petitioner against other and further indictments for the same alleged offenses, nor can any verdict entered upon said indictment be pleaded in bar of further prosecutions for the same alleged offenses.

Wherefore, your petitioner prays that an order be entered upon the United States Attorney to furnish your petitioner, within a reasonable time to be fixed by the Court, with a bill of particulars of all and every of the matters alleged in said indictment and more specifically
88 of all and every of the matters and things specified and requested in this petition or for such relief as to the Court shall seem meet and just.

(Sgd.) William R. Johnson,

Defendant.

(Sgd.) George F. Callaghan,

Attorney for Defendant.

89 IN THE DISTRICT COURT OF THE UNITED STATES.
 • • (Caption—32168) • •

MOTION FOR BILL OF PARTICULARS.

And now come the defendants, William R. Skidmore, in his own proper person and by his counsel, William W. Smith; William Goldstein, in his own proper person and by his counsel, Leslie E. Salter; Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay and Bernice Downey, each in his and her own proper person and by their counsel, Edward J. Hess; and Stuart Solomon Brown, in his own proper person and by his counsel Edward J. Hess and Edward A. Fisher, and respectfully move the court for an order to be entered of record in this cause, requiring the United States of America to file in said cause and to furnish to defendants and each of them a bill of particulars respecting the allegations and charges against said defendants, and each of them, wherewith they and each of them are charged in the indictment aforesaid with respect to the matters and things herein more particularly set forth:

90 For the reason that the said defendants, and each of them, are not advised, are unaware of, and are wholly unable, by reason of the vagueness and indefiniteness, and their lack of information of the charges laid against them in said indictment, to prepare and defend themselves against said indictment or the allegations and charges therein laid against them and each of them; and unless they and each of them be apprized by a bill of particulars of the allegations and charges against them in apt time prior to the trial of said cause, said defendants and each of them will suffer irreparable harm and injury, will be subjected to, and surprised by, evidence sought to be introduced by the United States of America upon the trial of said cause, and will be unable to meet or cope with unexpected evidence. Defendants respectfully call the court's attention to the following:

Count One.

(1) Paragraph 2 on page 3 of said indictment (in referring to the defendant William R. Johnson with whom these defendants are impleaded), among other things alleges:

"did on, to wit, March 15, 1937, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, \$313,401.32 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully and knowingly attempting to defeat and evade the said tax did, on, to wit, March 12, 1937, at Chicago aforesaid, in the division and judicial district aforesaid, make under his oath an income tax return for said calendar year and thereafter on to wit, March 15, 1937, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year, * * *"

meaning and intending thereby that the defendant
91 Johnson, as principal, unlawfully did the things referred to therein.

(2) In paragraph 2 on page 5 of said indictment, it is charged, among other things, in substance that defendant William R. Johnson, with respect to attempting to evade and defeat his income taxes for the calendar year 1936:

"did conceal and cause to be concealed from any and all proper officers of the United States, his gross and net incomes aforesaid, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof."

(3) And in paragraph 3 on page 5, it is charged in said indictment that William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey, defendants herein,

"well knowing all the premises, did unlawfully, feloniously, wilfully and knowingly, aid, abet, 'conceal,' induce and procure the said defendant, William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately \$313,401.32, upon his, the said

William R. Johnson's, net income for the calendar year 1936, by the means and in the manner aforesaid ""

As to said allegations defendants and each of them respectfully request that the United States of America be ordered and directed to file in this cause and furnish said defendants and each of them:

(a) With the particulars of the manner, means, and/or connection by which the said William R. Johnson was aided, abetted, "concealed," induced or procured to do, or attempts to do, the matters and things set forth in said 92 allegations.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(b) It is requested that the United States of America be compelled to particularize by what act or acts, and at what time or times, and at what place or places, did defendants, or any or either of them, aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged unlawful means set forth in the indictment.

Said particulars are requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(c) It is requested that the United States of America be compelled to state whether or not any other means were employed by the defendant William R. Johnson to effect or bring about the alleged attempt to defeat and evade income taxes as charged in count one of said indictment, and if so, state what those means were and in what manner, means and/or connection the said Johnson was 93 aided abetted, "concealed," induced or procured to do, or attempt to do, the things set forth in said alleged means.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(d) If it be disclosed by the United States of America that other means were employed, particulars are respectfully requested as to what act, or acts, and at what time or times, and at what place or places, did defendants aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged means.

Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

94

Count Two.

(1) Paragraph 2 on page 9 of said indictment (in referring to the defendant William R. Johnson with whom these defendants are impleaded), among other things alleges:

"did, on, to wit, March 15, 1938, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, \$460,234.59 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 14, 1938, at Chicago aforesaid, in the division and judicial district aforesaid, make under his oath an income tax return for said calendar year, and thereafter, on, to wit, March 15, 1938, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the calendar year, . . ."

meaning and intending thereby that the defendant Johnson, as principal, unlawfully did the things referred to therein.

(2) In paragraph 1 on page 11 of said indictment, it is charged, among other things, in substance that defendant William R. Johnson, with respect to attempting to evade and defeat his income taxes for the calendar year 1937:

"did conceal and cause to be concealed from any and all proper officers of the United States his gross and net incomes aforesaid, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof."

(3) And in paragraph 2 and page 11, and paragraph 1

on page 12, it is charged in said indictment that William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey, defendants herein,

“well knowing all the premises aforesaid, did unlawfully, feloniously, wilfully and knowingly aid, abet, ‘conceal,’
 95 induce, and procure the defendant William R. Johnson, unlawfully, feloniously, wilfully and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid, of, to wit, approximately \$40,234.59 upon his, the said William R. Johnson’s net income for the said calendar year 1937, by the means and in the manner aforesaid * * *.”

As to said allegations defendants and each of them respectfully request that the United States of America be ordered and directed to file in this cause and furnish said defendants and each of them:

(a) With the particulars of the manner, means and/or connection by which the said William R. Johnson was aided, abetted, “concealed,” induced or procured to do, or to attempt to do, the matters and things set forth in said allegations.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(b) It is requested that the United States of America be compelled to particularize by what act or acts, and at what time or times, and at what place or places, did defendants, or any or either of them, aid, abet, “conceal,” induce or procure defendant Johnson to do and perform the alleged unlawful means set forth in the indictment.

Said particulars are requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(c) It is requested that the United States of America be compelled to state whether or not any other means were employed by the defendant William R. Johnson to effect

or bring about the alleged attempt to defeat and evade income taxes as charged in count two of said indictment, and, if so, state what those means were and in what manner, means and/or connection the said Johnson was aided, abetted, "concealed," induced or procured to do, or attempt to do, the things set forth in said alleged means.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

(d) If it be disclosed by the United States of America that other means were employed, particulars are respectfully requested as to what act, or acts, and at what time or times, and at what place or places, did defendants aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged means.

97 Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

Count Three.

(1) Paragraph 2 on page 15 of said indictment (in referring to the defendant William R. Johnson with whom these defendants are impleaded), among other things alleges:

"did, on, to wit, March 15, 1939, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, \$614,764.07 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully, and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 4th, 1939, at Chicago aforesaid, in the division and judicial district aforesaid, make under his oath an income tax return for said calendar year, and thereafter, on, to wit, March 15, 1939, did file and cause to be filed with said Collector of Internal Revenue said income tax return for the said calendar year * * *",

meaning and intending thereby that the defendant John-

son, as principal, unlawfully did the things referred to therein.

(2) In paragraph 1 on page 17 of said indictment, it is charged in said indictment that William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey, defendants herein,

98 "well knowing all the premises aforesaid, did unlawfully, feloniously, wilfully, and knowingly aid, abet, 'conceal,' induce, and procure the defendant William R. Johnson, unlawfully, feloniously, wilfully, and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately \$614,-764.07 upon his, the said William R. Johnson's net income for the said calendar year 1938, by the means and in the manner aforesaid * * *."

As to said allegations defendants and each of them respectfully request that the United States of America be ordered and directed to file in this cause and furnish said defendants and each of them:

(a) With the particulars of the manner, means and/or connection by which the said William R. Johnson was aided, abetted, "concealed," induced or procured to do, or to attempt to do, the matters and things set forth in said allegations.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

(b) It is requested that the United States of America be compelled to particularize by what act or acts, and at what time or times, and at what places or place, did defendants, or any or either of them, aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged unlawful means set forth in the indictment.

Said particulars are requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Soloman Brown, and Bernice Downey.

(c) It is requested that the United States of America be compelled to state whether or not any other means were employed by the defendant William R. Johnson to effect or bring about the alleged attempt to defeat and evade income taxes as charged in count three of said indictment, and, if so, state what those means were and in what manner, means and/or connection the said Johnson was aided, abetted, "concealed," induced or procured to do, or attempt to do, the things set forth in said alleged means.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(d) If it be disclosed by the United States of America that other means were employed, particulars are respectfully requested as to what act, or acts, and at what time or times, and at what place or places, did defendants aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged means.

100 Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

Count Four.

(1) Paragraph 2 on page 21 of said indictment (in referring to the defendant William R. Johnson with whom these defendants are impleaded), among other things alleges:

"did, on, to wit, March 15, 1940, at Chicago aforesaid, in the division and judicial district aforesaid, unlawfully, wilfully and knowingly attempt to defeat and evade a large part, to wit, \$497,744.33 of the said tax upon his said net income for the said calendar year, and as a means of so unlawfully, wilfully, and knowingly attempting to defeat and evade the said tax, did, on, to wit, March 4, 1940, at Chicago aforesaid, in the division and judicial district aforesaid, make under his oath an income tax return for said calendar year and thereafter, on, to wit, March 15, 1940, did file and cause to be filed with said Collector of

Internal Revenue said income tax return for the said calendar year * * *

meaning and intending thereby that the defendant Johnson, as principal, unlawfully did the things referred to therein.

(2) In paragraph 1 on page 24 of said indictment, it is charged in said indictment that William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. McKay, Stuart Solomon Brown, and Bernice Downey, defendants herein

101 "well knowing all the premises aforesaid, did unlawfully, feloniously, wilfully and knowingly aid, abet, "conceal," induce, and procure the defendant William R. Johnson, with aliases as aforesaid, unlawfully, feloniously, wilfully and knowingly to attempt in the manner aforesaid to evade and defeat the income tax aforesaid of, to wit, approximately \$497,744.33 upon his, the said William R. Johnson's net income for the said calendar year 1939, by the means and in the manner aforesaid * * *"

As to said allegations defendants and each of them respectfully request that the United States of America be ordered and directed to file in this cause and furnish said defendants and each of them:

(a) With the particulars of the manner, means and/or connection by which the said William R. Johnson was aided, abetted, "concealed," induced or procured to do, or to attempt to do, the matters and things set forth in said allegations.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, and Stuart Solomon Brown, and Bernice Downey.

(b) It is requested that the United States of America be compelled to particularize by what act or acts, and at what time or times, and at what place or places, did defendants, or any or either of them, aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged unlawful means set forth in the indictment.

Said particulars are requested as to each of the fol-
102 lowing defendants: William R. Skidmore, William

Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie

Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(c) It is requested that the United States of America be compelled to state whether or not any other means were employed by the defendant William R. Johnson to effect or bring about the alleged attempt to defeat and evade income taxes as charged in count four of said indictment, and, if so, state what those means were and in what manner, means and/or connection the said Johnson was aided, abetted, "concealed," induced or procured to do, or attempt to do, the things set forth in said alleged means.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

(d) If it be disclosed by the United States of America that other means were employed, particulars are respectfully requested as to what act, or acts, and at what time or times, and at what place or places, did defendants aid, abet, "conceal," induce or procure defendant Johnson to do and perform the alleged means.

103 Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

Count Five.

This count charges all of the defendants named in the caption hereof with an alleged continuing conspiracy to attempt to evade the payment of the income tax due the United States from the defendant William R. Johnson during the years 1936, 1937, 1938 and 1939 in the approximate amount of one million eight hundred eighty-six thousand one hundred forty-four dollars and thirty-one cents (\$1,886,144.31).

It charges that the defendants as a part of said conspiracy would open, maintain and operate, or cause to be opened, maintained and operated for the financial benefit of William R. Johnson certain gambling places or houses under names other than Johnson's, thereby concealing and

causing to be concealed from the Internal Revenue officers the true ownership of the alleged gambling houses and relative enterprises.

Said count further charges as a part of said conspiracy that for the purpose of furnishing banking facilities to the defendant Johnson, certain currency exchanges, particularly one at Lawrence avenue in the city of Chicago, was opened, maintained and operated.

104 Said count at page 38 thereof then alleges that the defendants, other than William R. Johnson, William R. Skidmore, William Goldstein, Stuart Solomon Brown and Bernice Downey, would open, maintain, operate and would cause to be opened, maintained and operated for the financial benefit of William R. Johnson, but under names other than Johnson's, the same gambling houses previously referred to, to wit: the gambling houses set forth at page 28 of the indictment.

Said count then alleges that said defendants would open, maintain and operate diverse currency exchanges, particularly one on Lawrence avenue, in the city of Chicago, for the purpose of furnishing banking facilities to the defendant Johnson and the aforesaid gambling houses.

Defendants respectfully ask that the government be required to particularize and designate which of the defendants are referred to.

(a) It is requested that the United States of America be compelled to state whether it refers to all of the defendants, or whether it refers to all defendants other than William R. Johnson, William R. Skidmore, William Goldstein, Stuart Solomon Brown and Bernice Downey, when it says at page 29 of said count in said indictment, in effect, that said defendants allegedly opened currency exchanges.

Particulars are respectfully requested as to each of the following defendants: William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown, and Bernice Downey.

105 (b) In the fifth count of said indictment, beginning at page 34, twenty overt acts are charged, none of which are alleged to have been done or participated in nor do they appear to be connected with defendants William R. Skidmore, Alexander, or Mackay. Counsel for said three last named defendants respectfully ask that the

United States be ordered and directed to furnish particulars, if any they have, as to the time and place and circumstances, if any, as to the alleged participation of Messrs. Skidmore, Alexander and Mackay with said alleged overt acts.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, Orrie Alexander, Reginald E. Mackay.

(c) It is requested that the United States of America be compelled to state whether or not said William R. Skidmore, Orrie Alexander and Reginald E. Mackay were or are implicated or connected with the said alleged overt acts.

Said particulars are respectfully requested as to each of the following defendants: William R. Skidmore, Orrie Alexander, Reginald E. Mackay.

106 Wherefore, the aforesaid defendants, and each of them, respectfully pray and move the court for an order directing the United States of America to file in this cause and to furnish them such further particulars in reference to the aforesaid indictment as to the court may seem meet and proper under the circumstances presented in this motion and the memoranda, points and authorities submitted therewith.

William R. Skidmore,
By Wm. J. Smith,
His counsel.

William Goldstein,
By: Leslie E. Salter,
His counsel.

Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
Orrie Alexander,
William P. Kelly,
Reginald E. Mackay,
Bernice Downey,
By: Edward J. Hess,
Their counsel.

Stuart Solomon Brown,
By: Edward J. Hess,
Edward A. Fisher,
His counsel.

Entered
June 17,
1940. 107 And afterwards, to wit, on the 17th day of June, A. D. 1940, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

108 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

ORDER.

This cause coming on to be heard upon the petitions of each of the defendants herein for an order upon the United States Attorney to furnish said defendants with bills of particulars as specified in said petitions, and the Court having considered said petitions and the various questions therein set forth, and having heard the arguments of counsel thereon:

It Is Therefore Ordered that William J. Campbell, United States Attorney, be and he is hereby directed to furnish bills of particulars to the defendants, as follows:

A. As to defendant, William R. Johnson:

1. An itemization as to the source, time of receipt and the amount of money derived, had and received by the defendant, William R. Johnson, comprising the figures and amounts stated to be the gross income of the defendant, William R. Johnson, in Counts 1, 2, 3 and 4 of the indictment, to wit:

\$607,399.48 as set forth in Count 1 of the indictment.

\$880,949.94 as set forth in Count 2 of the indictment.

\$959,908.23 as set forth in Count 3 of the indictment.

\$932,571.96 as set forth in Count 4 of the indictment.

109 2. An itemization and description as to what books and records of the defendant, William R. Johnson, were concealedd and caused to be conceald, as charged in Counts 1, 2, 3 and 4 of the indictment.

B. As to defendants,

William R. Skidmore

William Goldstein

Andrew J. Creighton

Jack Sommers
Edward Wait
James A. Hartigan
John M. Flanagan
William P. Kelly
Reginald E. Mackay
Stuart Solomon Brown
Bernice Downey

1. A particularization of the act or acts, and at what time or times, and in what place or places, the aforesaid defendants, or either of them, aided, abetted, counselled, induced and procured the defendant, William R. Johnson, to do and perform the alleged unlawful offenses described in Counts 1, 2, 3 and 4, respectively, of the indictment.

It Is Further Ordered, that the above bill of particulars be filed within 21 days from June 17, 1940.

It Is Further Ordered, that all other requests for particulars as contained in the petitions of the defendants be, and the same are hereby denied, to which ruling of the Court an exception is allowed each defendant.

(Sgd.) Barnes,

United States District Judge.

Enter: June 17, 1940.

110 And on, to wit, the 3rd day of July, A. D. 1940, came the United States by its attorneys and filed in the Clerk's office of said Court Bill of Particulars in words and figures following, to wit:

Filed
July 3,
1940.

111 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.

• • (Caption—32168) • •

BILL OF PARTICULARS.

Comes now the United States of America, by William J. Campbell, United States Attorney for the Northern District of Illinois, and pursuant to the Order of this Court so to do, furnishes to the defendants the following information:

*Bill of Particulars.***Part I****To Defendant William R. Johnson:****Count One of Indictment****Year 1936****Gross Income Alleged: \$607,399.48****Itemization:**

1.	Interest as reported on income tax return of defendant Johnson	2,111.85
2.	Rent as reported on same return	16,189.03
3.	From checks cashed at the Northern Trust Company, Chicago, during January to May, inclusive, 1936, by defendant Jack Sommers	111,578.60
112 4.	From currency exchange at the Northern Trust Company, Chicago and Albany Park Deposit and Exchange Company, Chicago, all during the year 1936, by defendant Jack Sommers and one Downey	148,400.00
5.	From checks cashed at Albany Park Deposit and Exchange Company, Chicago, all during June to December, inclusive, 1936, by defendant Jack Sommers and one Downey	255,401.40
6.	From checks cashed and deposits made at the Mid-City National Bank of Chicago and the I. C. State Bank of Chicago, all during the year 1936, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzen	57,520.00
7.	From checks cashed at the Lawndale Currency Exchange all during the year 1936, by defendant John M. Flanagan, and one Albert Couch	16,198.60
Total		\$607,399.48

The source of the above items from 3 to 7, inclusive, is gains or profits derived, had, and received by the de-

fendant William R. Johnson during the calendar year 1936 from the operation of a gambling business in the following gambling establishments:

- The Horse-Shoe Club
- The Casino Club
- The Dev-Lin
- The Lincoln Tavern
- The Harlem Stables
- The House of Niles
- The D. & D. Club
- The Bon-Air Casino
- The Villa Moderne
- The 4020 Club
- The Southland Club
- The Western Club
- 113 The Select Club
- The Mayfair Club
- The Northland Club
- The Club Proviso
- The 4011 Club
- 2135 Pulaski Road
- The Lake Park Club
- The Harlem Club
- The 11901 Vincennes Club
- The 406 Club

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Part II

To Defendant William R. Johnson:

Count Two of Indictment

Year 1937

Gross Income Alleged: \$880,949.94

Itemization:

1. Interest as reported on income tax return of defendant Johnson 2,065.00
2. Rent as reported on same return 17,461.63
3. Loss from operation of farm as reported on same return—Red Figure— (26,023.41)
4. From checks cashed by defendant Jack Sommers at the Albany Park Deposit and Exchange from January to August, inclusive, 1937 623,690.56
5. From checks cashed and deposits made at the Mid-City National Bank of Chicago and the I. C. State Bank of Chicago, from January 1 to August 31, inclusive, 1937, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzen 209,406.16
6. From currency exchanged by defendant Jack Sommers at the Northern Trust Company, and the Albany Park Deposit and Exchange during January to August, inclusive, 1937, and at the Mid-City National Bank of Chicago, by Andrew J. Creighton, from January to August, inclusive, 1937 54,350.00

Total

\$880,949.94

The source of the above items 4 to 6, inclusive, is gains or profits derived, had, and received by the defendant

William R. Johnson during the calendar year 1937 from
the operation of a gambling business in the following
115 gambling establishments:

The Horse-Shoe Club
The Casino Club
The Dev-Lin
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club
The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

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Part III.**To Defendant William R. Johnson:****Count Three of Indictment****Year 1938****Gross Income Alleged: \$959,908.28****Itemization:**

1. Interest as reported on income tax return of defendant Johnson 1,318.90
2. Rents as reported on same return 20,328.18
3. Loss from operation of farm as reported on same return—Red Figure— (22,414.42)
4. From checks cashed by defendant Jack Sommers at the Albany Park Deposit and Exchange during February 1 to July 20, inclusive, 1938 376,783.14
5. From checks cashed by defendant Jack Sommers at the Lawrence Avenue Currency Exchange during July 21 to December 31, inclusive, 1938 194,557.53
6. From checks cashed and deposits made at the Mid-City National Bank of Chicago and the I. C. State Bank of Chicago, from March 1 to December 31, inclusive, 1938, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzen 139,334.95
7. From currency exchanged by the defendant Jack Sommers at the Albany Park Deposit and Exchange, Lawrence Avenue Currency Exchange, and Northern Trust Company, and by Andrew J. Creighton at the Mid-City National Bank, all during the year 1938 250,000.00

Total**\$950,908.28**

The source of the above items 4 to 7, inclusive, is gains or profits derived, had, and received by the defendant

117 William R. Johnson during the calendar year 1938 from the operation of a gambling business in the following gambling establishments:

The Horse-Shoe Club
The Casino Club
The Dev-Lin
/ The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club
The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

Part IV

To Defendant William R. Johnson:

Count Four of Indictment

Year 1939

Gross Income Alleged: **\$932,571.96**

Itemization:

- | | |
|--|------------|
| 1. Interest as reported on income tax return of defendant Johnson | 1,222.36 |
| 2. Rents as reported on same return | 18,239.61 |
| 3. Loss from operation of farm as reported on same return—Red Figure— | 23,441.46 |
| 4. From checks cashed and currency exchanged by defendant Jack Sommers at the Lawrence Avenue Currency Exchange and the Northern Trust Company from January 1 to September 30, inclusive, 1939 | 936,551.43 |

Total

\$932,571.96

The source of the above item No. 4 is gains or profits derived, had, and received by the defendant William R. Johnson during the calendar year 1939 from the operation of a gambling business in the following gambling establishments:

The Horse-Shoe Club

The Casino Club

The Dev-Lin Club

The Lincoln Tavern

The Harlem Stables

The House of Niles

The D. & D. Club

The Bon-Air Casino

The Villa Moderne

The 4020 Club

The Southland Club

119 The Western Club

The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

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Part V

To Defendant William R. Johnson:

An Itemization of Books and Records Reflecting Gross and Net Incomes and the Sources Thereof, as Charged in the First Four Counts of the Indictment, as Follows:

1. Daily profit and loss statements, sometimes called "Day to Day Record", of each gambling house owned and operated by Johnson.

2. Ledger records showing name, address, and amount of wages paid by defendant Johnson to each of the employees working in his various gambling houses throughout the calendar years 1937, 1938 and 1939.

3. All of the books and records of the Lawrence Avenue Currency Exchange, i. e., those in which were shown the dates, names of payees, amounts, bank on which drawn, endorsers, and makers of all checks cashed, all correspondence, cancelled checks, bank books, bank statements, journal, general ledger, requisitions for money orders, records of money orders sold, two certain loose-leaf ring binder black books containing entries from the teller sheets, duplicate receipts for currency and checks received.

4. All of the books and records reflecting on the gambling business conducted at the Bon-Air Country Club.

5. The records showing the rental income of the premises located at 3424 Lawrence Avenue, commonly known as the Albany Park Bank Building, and the premises located at 9730 South Western Avenue, a gambling house commonly known as the "Club Western".

6. The records showing the expenses of conducting a gambling business at the following locations:

The Horse-Shoe Club
The Casino Club
The Dev-Lin
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club
The Select Club
The Mayfair Club
The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

7. Receipts given by defendants Bernice Downey and Stuart Solomon Brown for money or checks transmitted to them by the various gambling houses owned and operated by the defendant William R. Johnson, last above mentioned.

8. Daily report of cash receipts and disbursements; daily ledger sheets; monthly recapitulation sheets.

9. All records pertaining to the purchase and installation of supplies, equipment, material and improvements of the aforesaid gambling establishments.

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Part VI.

To Defendants:

William R. Skidmore
William Goldstein
Andrew J. Creighton
Jack Sommers
Edward Wait
James A. Hartigan
John M. Flanagan
William P. Kelly
Reginald E. Mackay
Stuart Solomon Brown
Bernice Downey

A Particularization of Acts, and the Time and Place
Thereof:

1. At various times all during each of the calendar years 1936 down to on or about September 30, 1939, the exact dates thereof other than as hereinafter stated in paragraph numbered 3 being at this time unknown, managed and operated, or caused to be managed and operated, on a cash or currency basis in such a manner as to conceal the financial interest therein of and the true and correct taxable income derived therefrom by the defendant William R. Johnson, a gambling business, conducted under the following names:

The Horse-Shoe Club
The Casino Club
The Dev-Lin
The Lincoln Tavern
The Harlem Stables
The House of Niles
The D. & D. Club
The Bon-Air Casino
The Villa Moderne
The 4020 Club
The Southland Club
The Western Club

The Select Club
The Mayfair Club
123 The Northland Club
The Club Proviso
The 4011 Club
2135 Pulaski Road
The Lake Park Club
The Harlem Club
The 11901 Vincennes Club
The 406 Club

2. That said defendants last aforesaid and each of them did in the management and operation of said gambling business aforesaid knowingly and intentionally at the request and direction of said Johnson fail to maintain or otherwise keep available any books or records whatever of the gross receipts, gross income, business expenses and net income derived from said gambling business, all for the purpose of concealing and causing to be concealed said gambling business and the taxable gain derived therefrom from the Internal Revenue officers of the United States and thereby enable said Johnson wilfully to attempt to evade and defeat his individual income taxes for each of the said calendar years 1936 to 1939, inclusive, by filing false and fraudulent income tax returns as charged in the first four counts of the indictment.

3. That it was the general practice in the conduct of said gambling business aforesaid to operate the gambling houses located within the City of Chicago during the fall and winter months, and those located outside the City of Chicago but within the Counties of Cook and

Lake during the spring and summer months, of each 124 of the calendar years 1936 to 1939, inclusive. Other than the above the Government cannot specify at this time with any more or greater particularity the exact periods of time during which said defendants operated or managed said gambling houses, except to state that it was the policy of said defendant Johnson to rotate the managers and employees of each of said gambling houses among all of said houses.

4. That all during the period, to wit, from on or about July, 1938, down to and including September 30, 1939, all of the last above named defendants made or caused to be

made numerous trips or visits to the Lawrence Avenue Currency Exchange for the purpose of delivering checks and currency to and thereafter receive from said defendants Brown or Downey packages of currency (and bags of coin), said packages and bags having been previously assorted and obtained for that purpose from the Central National Bank in Chicago and the North Shore National Bank of Chicago, all of which said packages of currency thus obtained constituted earnings or profits of said defendant Johnson derived from the operation of said gambling houses. Said sums thus obtained and transmitted aggregated \$1,100,000, the detailed records of which were burned or otherwise destroyed by either one or both of the defendants Brown and Downey sometime during the months of October or November, 1939.

125 5. That sometime during or about the month of December, 1936, defendants Sommers and Hartigan conferred with defendant Johnson, and others, at the Horse-Shoe gambling house in Chicago, at which time and place defendant Johnson gave certain instructions to be complied with by the managers and operators of his various gambling houses, all for the purpose of concealing the ownership of and the income derived from said gambling business; and that all of said defendants last above mentioned did thereafter comply or attempt to comply with said instructions.

6. All during the calendar year 1936 and down to and including on or about March 15, 1937, all during the calendar year 1937 and down to and including on or about March 15, 1938, all during the calendar year 1938 and down to and including on or about March 15, 1939, and all during the calendar year 1939 and down to and including on or about March 15, 1940, aided, abetted, counseled, induced, advised and procured, the defendant Johnson wilfully to attempt to evade and defeat the payment of his the said Johnson's individual income taxes for each of said calendar years last stated, by filing on or about March 15, next succeeding the close of each of said calendar years 1936 to 1939, inclusive, false and fraudulent income tax returns, i.e., returns understating a large portion of the gross and net income and the taxes due thereon to the
126 United States of America, and returns concealing the source of all gains, profits and income derived by him the said Johnson from the operation of said gambling business.

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Part VII.

To Defendant Jack Sommers: A Particularization of
Other and Further Acts, and the Time and Place Thereof:

(1936)

1. Cashed checks at the Northern Trust Co., Chicago, during January to May, inclusive, 1936, aggregating \$111,578.60.

2. Exchanged currency at the Northern Trust Co., Chicago, and at the Albany Park Deposit and Exchange, Chicago, all during the year 1936, aggregating \$148,400.00.

3. Cashed checks at the Albany Park Deposit and Exchange, Chicago, during June to December, inclusive, 1936, aggregating \$255,401.40.

(1937)

4. Cashed checks at the Albany Park Deposit and Exchange, Chicago, all during the year 1937, aggregating \$623,690.56.

5. Exchanged currency at the Northern Trust Co., Chicago, and at the Albany Park Deposit and Exchange, Chicago, all during the year 1937.

(1938)

6. Cashed checks at the Albany Park Deposit and Exchange, Chicago, all during the year 1938, aggregating \$376,783.14.

128 7. Exchanged currency at the Albany Park Deposit and Exchange Co., Chicago, the Lawrence Avenue Currency Exchange, Chicago, the Mid-City National Bank of Chicago, and the Northern Trust Co., Chicago (together with A. J. Creighton), all during the year 1938, aggregating \$250,000.00.

7(a) Cashed checks at the Lawrence Avenue Currency Exchange during July 21 to December 31, inclusive, 1938, aggregating \$194,557.33.

(1939)

8. Exchanged currency at the Northern Trust Co., Chicago, all during the year 1939, aggregating \$100,000.00.

8(a) Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, and the

Northern Trust Co., Chicago, from January 1 to September 30, inclusive, 1939, aggregating \$936,551.43.

9. On December 29, 1939, at Room 284 United States Court House, Chicago, Illinois, made under oath a false statement to certain Internal Revenue officers, to wit, Special Agents W. A. Sommers and C. L. Converse of the Intelligence Unit, and Frank J. Clifford, Revenue Agent, Bureau of Internal Revenue, Treasury Department of the United States.

10. On or about the 17th and 18th days of January and the 5th day of February 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the 129 amount and source of the income of defendant Johnson for each of the calendar years 1936 to 1939, inclusive,

and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of his individual income taxes due to the United States of America for each of said calendar years.

11. (a) On or about March 5, 1937, filed his individual income tax return for the calendar year 1936, with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 14, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 15, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

12. On February 5, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 197 and the total wages paid during said month as \$38,776.00.

13. On March 5, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 190 and the total wages paid during said month as \$34,125.00.

14. On April 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 236 and the total wages paid during said month as \$49,569.00.

15. On May 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of April, 1937, showing the total number of employees as 269 and the total wages paid during said month as \$42,344.00.

16. On June 2, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 238 and the total wages paid during said month as \$51,214.00.

17. On July 3, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as 246 and the total wages paid during said month as \$33,380.00.

18. On August 2, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of July, 1937, showing the total number of employees as 124 and the total wages paid during said month as \$21,452.00.

19. On September 13, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of August, 1937, showing the total number of employees as 155 and the total wages paid during said month as \$19,298.00.

20. On November 1, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of September, 1937, showing the total number of employees as 1 and the total wages paid during said month as \$80.00.

21. On November 30, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an employer's return under Title VIII of the Social Security Act for the month of October, 1937, showing the total number of employees as 1 and the total wages paid during said month as \$80.00.

132 22. On December 12, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois an employer's return under Title VIII of the Social Security Act for the months of November and December 1937, showing the total number of employees as 1 for each of said months and the wages paid during said month as \$80.00 per each employee.

23. On April 16, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 293 employees and \$48,238.00 wages paid.

24. On July 19, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 404 employees and \$162,095.00 wages paid.

25. On October 11, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 392 employees and \$118,230.00 wages paid.

26. On January 24, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 209 employees and \$43,506.00 wages paid.

133 27. On April 13, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 261 employees and \$123,249.00 wages paid.

28. On July 18, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 256 employees and \$118,439.00 wages paid.

29. On October 10, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing 245 employees and \$144,323.00 wages paid.

30. On January 29, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals for

the calendar year 1937 under Title IX of the Social Security Act showing the average number of employees quarterly as 178 and the total wages paid to them as \$302,207.00.

31. On January 24, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals for the calendar year 1938 under Title IX of the Social Security Act showing the average number of employees quarterly as 282 and the total amount of wages paid to them during said calendar year as \$387,088.00.

134 32. (a) Opened and maintained or caused to be opened and maintained a bank account at the Northern Trust Co., Chicago, from on or about October 4, 1934, down to and including December 31, 1939, under the name of one Jack Sommers, the same being a joint account with one Margaret Sommers.

(b) Opened and maintained or caused to be opened and maintained a bank account at the Northern Trust Co., Chicago, from on or about February 23, 1937, down to and including on or about March 3, 1938, under the name of one Jack Sommers.

(c) Opened and maintained or caused to be opened and maintained a bank account at the Northern Trust Co., Chicago, from on or about January 29, 1938, down to and including January 27, 1939, under the name of one Jack Sommers.

(d) Opened and maintained or caused to be opened and maintained a bank account at the Northern Trust Co., Chicago, from on or about August 3, 1939, down to and including on or about September 30, 1939, under the name of Jack and Margaret Sommers.

33. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of, 135 said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said "Johnson," all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large por-

tion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

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Part VIII

To Defendant Andrew J. Creighton:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

(1936)

1. Cashed checks at Mid-City National Bank of Chicago, all during the year 1936, aggregating \$57,520.00.

(1937)

2. Cashed checks at the Mid-City National Bank of Chicago, all during the year 1937, aggregating \$116,890.46.

(1938)

3. Cashed checks at the Mid-City National Bank of Chicago and the Washington Park Currency Exchange, Chicago, all during the year 1938, aggregating \$139,334.95.

4. Exchanged currency at the Albany Park Deposit and Exchange Co., Chicago, the Lawrence Avenue Currency Exchange, Chicago, the Mid-City National Bank of Chicago, and the Northern Trust Co., Chicago (together with Jack Sommers), all during the year 1938, aggregating \$250,000.00.

(1939)

5. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from January 1, to September 30, inclusive, 1939 in an amount at this time unknown.

6. On or about the 17th, 25th and 29th days of August, 1939, and the 26th day of January, and the 5th day of February 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of defendant Johnson for each of the calendar years 1936 and 1939, inclusive,

and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of his individual income taxes due the United States of America for each of said calendar years.

7. (a) On or about March 13, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 14, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

138 8. On January 21, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, four annual returns of excise tax on employers of eight or more individuals for the calendar year 1937 under Title IX of the Social Security Act showing the average number of employees quarterly as 59 and the total wages paid to them as \$345,211.00.

9. On January 23, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, three annual returns of excise tax on employers of eight or more individuals for the calendar year 1938 under Title IX of the Social Security Act showing the average number of employees quarterly as 56 and the total amount of wages paid to them during said calendar year as \$246,628.00.

10. On February 18, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, four Employer's Returns under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 211 and the total wages paid during said month as \$38,680.00.

11. On March 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, four Employer's Returns under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 218 and the total wages paid during said month as \$37,746.00.

12. On April 8, 1937, filed with the Collector of In-

ternal Revenue at Chicago, Illinois, four Employer's
139 Returns under Title VIII of the Social Security Act
for the month of March, 1937, showing the total num-
ber of employees as 225 and the total wages paid during
said month as \$43,781.00.

13. On May 18, 1937, filed with the Collector of Internal
Revenue at Chicago, Illinois, four Employer's Returns
under Title VIII of the Social Security Act for the month
of April, 1937, showing the total number of employees as
347 and the total wages paid during said month as \$36,-
924.00.

14. On June 21, 1937, filed with the Collector of In-
ternal Revenue at Chicago, Illinois, four Employer's Re-
turns under Title VIII of the Social Security Act for the
month of May, 1937, showing the total number of em-
ployees as 228 and the total wages paid during said month
as \$43,283.00.

15. On July 16, 1937, filed with the Collector of Internal
Revenue at Chicago, Illinois, four Employer's Returns
under Title VIII of the Social Security Act for the month
of June, 1937, showing the total number of employees as
351 and the total wages paid during said month as \$40,-
583.00.

16. On August 11, 1937, filed with the Collector of In-
ternal Revenue at Chicago, Illinois, three Employer's
Returns under Title VIII of the Social Security Act for
the month of July, 1937, showing the total number of em-
ployees as 243 and the total wages paid during said month
as \$42,935.00.

140 17. On September 21, 1937, filed with the Collector
of Internal Revenue at Chicago, Illinois, three Em-
ployer's Returns under Title VIII of the Social Security
Act for the month of August, 1937, showing the total num-
ber of employees as 343 and the total wages paid during
said month as \$38,137.00.

18. On October 25, 1937, filed with the Collector of
Internal Revenue at Chicago, Illinois, three Employer's
Returns under Title VIII of the Social Security Act for
the month of September, 1937, showing the total number
of employees as 200 and the total wages paid during said
month as \$5,168.00.

19. On November 30, 1937, filed with the Collector of
Internal Revenue at Chicago, Illinois, an Employer's Re-
turn under Title VIII of the Social Security Act for the
month of October, 1937, showing the total number of em-

ployees as 12 and the total wages paid during said month as \$1,612.00.

20. On December 31, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of November, 1937, showing the total number of employees as 12 and the total wages paid during said month as \$1,540.00.

21. On January 25, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of December, 1937, showing the total number of employees as 20 and the total wages paid during said month as \$1,609.00.

141 22. On April 28, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 225 employees and \$37,726.00 wages paid.

23. On July 25, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 252 employees and \$94,072.00 wages paid.

24. On October 21, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 221 employees and \$68,131.00 wages paid.

25. On January 23, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 208 employees and \$40,322.00 wages paid.

26. On April 25, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, two Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 247 employees and \$119,040.00 wages paid.

27. On July 20, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 321
142 employees and \$93,481.00 wages paid.

28. On October 28, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, three Employer's Tax Returns under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing no employees and no wages paid.

29. (a) Opened and maintained or caused to be opened and maintained a bank account at the I. C. State Bank of Chicago, from on or about July 11, 1936, down to and including on or about September 4, 1937, under the name of one William Foley.

(b) Opened and maintained or caused to be opened and maintained a bank account at the Continental Illinois National Bank and Trust Company, Chicago, from on or about November 23, 1937, down to and including on or about July 21, 1938, under the name of Andrew J. Creighton, the same being a savings account numbered 81955.

(c) Opened and maintained or caused to be opened and maintained a bank account at the Mid-City National Bank of Chicago, from on or about October 25, 1936, down to and including November 9, 1939, under the name of one Andrew J. Creighton.

(d) Opened and maintained or caused to be opened and maintained a bank account at the Mid-City National Bank of Chicago, from on or about November 23, 1936, down to and including November 6, 1938, under the fictitious name of Crawford Cigarette Vending Service.

143 (e) Opened and maintained or caused to be opened and maintained a bank account at the Continental Illinois National Bank and Trust Co., Chicago, from on or about January 1, 1936, down to and including on or about December 31, 1939, under the name of one Andrew J. Creighton.

30. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson, all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade

and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

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Part IX

To Defendant William P. Kelly:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. On January 3, 1940, at Room 284 United States Court House, Chicago, Illinois, made under oath a false statement to an Internal Revenue officer, to wit, Special Agent Clarence L. Converse of the Intelligence Unit, Bureau of Internal Revenue, Treasury Department of the United States.

2. On or about the 17th and 24th days of January, and the 5th day of February, 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of defendant Johnson for each of the calendar years 1936 to 1939, inclusive, and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of his individual income taxes due the United States of America for each of said calendar years.

3. (a) On or about March 10, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 14, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

145 (c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue at Chicago, Illinois.

4. On February 11, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of

employees as 177 and the total wages paid during said month as \$36,461.00.

5. On March 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 165 and the total wages paid during said month as \$29,077.00.

6. On April 15, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 25 and the total wages paid during said month as \$3,744.00.

7. On May 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of April, 1937, showing the total number of employees as 143 and the total wages paid during said month as \$14,930.00.

146 8. On June 3, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 136 and the total wages paid during said month as \$4,535.00.

9. On July 15, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as 109 and the total wages paid during said month as \$10,248.00.

10. On August 8, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of July, 1937, showing the total number of employees as 106 and the total wages paid during said month as \$12,418.00.

11. On September 14, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of August, 1937, showing the total number of employees as 106 and the total wages paid during said month as \$12,522.00.

12. On October 13, 1937, filed with the Collector of In-

ternal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of September, 1937, showing the total number of employees as none and the total wages paid during said month as none.

147 13. On November 8, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of October, 1937, showing the total number of employees as none and the total wages paid during said month as none.

14. On December 13, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of November, 1937, showing the total number of employees as none and the total wages paid during said month as none.

15. On January 12, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of December, 1937, showing the total number of employees as none and the total wages paid during said month as none.

16. On April 26, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 144 employees and \$15,754.00 wages paid.

17. On July 29, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 191 employees and \$48,620.00 wages paid.

18. On October 24, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 47 employees and \$9,206.00 wages paid.

19. On January 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 29 employees and \$3,395.00 wages paid.

20. On April 27, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return

under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 196 employees and \$91,942.00 wages paid.

21. On July 17, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 222 employees and \$82,181.00 wages paid.

22. On October 25, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing 2 employees and \$4,733.00 wages paid.

23. On January 27, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1937, showing the average number of employees quarterly as 65 and the total amount of wages paid to them during said calendar year as \$139,944.00.

149 24. On January 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1938, showing the average number of employees quarterly as 75 and the total amount of wages paid to them during said calendar year as \$79,596.00.

25. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson.

all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

To Defendant John M. Flanagan:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. (a) On or about March 5, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about February 26, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue at Chicago, Illinois.

2. Cashed checks at the Lawndale Currency Exchange, Chicago, all during the year 1936, aggregating \$20,000.00.

3. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from January 1 to September 30, inclusive, 1939, in an amount at this time unknown.

151 4. On February 17, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 80 and the total wages paid during said month as \$16,453.00.

5. On March 11, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 58 and the total wages paid during said month as \$15,083.00.

6. On April 7, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 61 and the total wages paid during said month as \$15,988.00.

7. On May 5, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return

under Title VIII of the Social Security Act for the month of April, 1937, showing the total number of employees as 61 and the total wages paid during said month as \$9,279.00.

8. On June 4, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 82 and the total wages paid during said month as \$15,698.00.

152 9. On July 6, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as 76 and the total wages paid during said month as \$10,767.00.

10. On August 12, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of July, 1937, showing the total number of employees as 71 and the total wages paid during said month as \$14,320.00.

11. On September 21, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of August, 1937, showing the total number of employees as 73 and the total wages paid during said month as \$14,332.00.

12. On October 19, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of September, 1937, showing the total number of employees as 76 and the total wages paid during said month as \$4,202.00.

13. On November 30, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of October, 1937, showing the total number of employees as 7 and the total wages paid during said month as \$1,451.00.

153 14. On December 31, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of November, 1937, showing the total number of employees as 8 and the total wages paid during said month as \$1,412.00.

15. On January 8, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of December, 1937, showing the total number of employees as 7 and the total wages paid during said month as \$1,486.00.

16. On April 5, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 65 employees and \$11,984.00 wages paid.

17. On July 15, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 82 employees and \$33,544.00 wages paid.

18. On October 11, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 48 employees and \$6,473.00 wages paid.

154 19. On January 12, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 47 employees and \$12,481.00 wages paid.

20. On April 12, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 80 employees and \$35,588.00 wages paid.

21. On July 17, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 87 employees and \$24,328.00 wages paid.

22. On October 12, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing 29 employees and \$6,434.00 wages paid.

23. On March 11, 1937, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more

individuals, under Title IX of the Social Security Act, for the calendar year 1936 showing wages paid during said calendar year as \$39,825.00.

155 24. On January 8, 1938, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, and annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1937, showing the average number of employees quarterly as 60 and the total amount of wages paid to them during said calendar year as \$120,471.00.

25. On January 12, 1939, filed or caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1938, showing the average number of employees quarterly as 34 and the total amount of wages paid to them during said calendar year as \$65,132.00.

26. Opened and maintained or caused to be opened and maintained a bank account at the Liberty National Bank of Chicago, from on or about March 23, 1937, down to and including December 31, 1939, under the name of one John Flanagan, said account being designated a "special account."

27. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and 156 income derived from, or ownership of said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson, all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

To Defendant James A. Hartigan:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. On December 28, 1939, at Room 284 United States Court House, Chicago, Illinois, made under oath a false statement to certain Internal Revenue officers, to wit, Special Agents W. A. Sommers and C. L. Converse of the Intelligence Unit, and Henry Levine, Revenue Agent, Bureau of Internal Revenue, Treasury Department of the United States.

2. On or about the 9th, 12th and 17th days of January, 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of defendant Johnson for each of the calendar years 1936 to 1939, inclusive, and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of his individual income taxes due the United States of America for each of said calendar years.

3. (a) On or about March 5, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 14, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

158 (c) On or about March 15, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

4. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from January 1 to September 30, inclusive, 1939, in an amount at this time unknown.

5. On February 11, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 119 and the total wages paid during said month as \$17,212.00.

6. On March 15, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 100 and the total wages paid during said month as \$12,798.00.

7. On April 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 134 and the total wages paid during said month as \$19,721.00.

159 8. On June 1, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of April, 1937, showing the total number of employees as 183 and the total wages paid during said month as \$19,933.00.

9. On June 9, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 171 and the total wages paid during said month as \$24,466.00.

10. On July 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois an Employer's Return under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as 358 and the total wages paid during said month as \$44,551.00.

11. On August 4, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of July, 1937, showing the total number of employees as 313 and the total wages paid during said month as \$56,108.00.

12. On September 3, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of August, 1937, showing the total number of employees as 418 and the total wages paid during said month as \$64,244.00.

160 13. On October 5, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of September, 1937, showing the total number of

employees as 240 and the total wages paid during said month as \$6,546.00.

14. On November 8, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of October, 1937, showing the total number of employees as 9 and the total wages paid during said month as \$1,364.00.

15. On December 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Return under Title VIII of the Social Security Act for the month of November, 1937, showing the total number of employees as 9 and the total wages paid during said month as \$1,320.00.

16. On January 13, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of December, 1937, showing the total number of employees as 10 and the total wages paid during said month as \$1,392.00.

17. On January 29, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals for the calendar year 1937 under Title IX of the Social Security Act showing the average number of employees quarterly as 179 and the total wages paid to them as \$274,042.00.

161 18. On January 24, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals for the calendar year 1938 under Title IX of the Social Security Act showing the average number of employees quarterly as 193 and the total amount of wages paid to them during said calendar year as \$17,344.00. (This return was notarized on January 24, 1939, before Bernice Downey.)

19. On April 13, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938 showing 263 employees and \$5,586.00 wages paid.

20. On July 12, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing no employees and no wages paid.

21. On October 10, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing no employees and no wages paid.

22. On January 24, 1939, defendant Hartigan filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 114 employees and \$11,502.00 wages paid.

162 23. On April 11, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 216 employees and \$55,728.00 wages paid.

24. On July 11, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 431 employees and \$89,563.00 wages paid.

25. On October 26, 1939, caused to be filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing wages paid to employees as \$151,192.00.

26. On or about November 1, 1939, fled from the City of Chicago to avoid service of process and the disclosure of his knowledge to agents of the Bureau of Internal Revenue of the income of the defendant Johnson for the years 1936, 1937, 1938 and 1939.

27. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson, all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his

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individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

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Part XII

To Defendant William Goldstein:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. On or about August 24, and December 22, 1939, and January 9 and 10, and February 13, 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of the defendant Johnson for each of the calendar years 1936 to 1939, inclusive, and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat the payment of a large part of his the said Johnson's individual income taxes due the United States of America for each of said calendar years as charged in the first four counts of the indictment.

2. On or about January 13, 1940, went to the Lawrence Avenue Currency Exchange, Chicago, and did then and there leave Grand Jury Exhibits 45 and 46, to wit, two ledger binders, the same being a part of the records of said exchange.

3. On or about September 1, 1938, made a visit or appeared at the aforesaid Casino Club located in the Portage Park Bank Building and did then and there make certain statements to police officers with respect to the ownership of said club.

4. On or about May 26, 1937, acquired, and did thereafter at all times down to on or about September 30, 1939, maintain and operate or cause to be maintained 165 and operated, a building in Chicago at 4715-17 West

Irving Park Blvd., commonly known as the Portage Park Bank Building, in such a manner and under such circumstances as to conceal the fact that said building was the wire service headquarters for the gambling business, i. e., the central point from which certain information relating to horse races and race tracks was transmitted by electrical device, that is to say, by telephone and teletype to various gambling houses as more particularly referred to in Parts I to IV herein.

5. On or about July 6, 1937, acquired for the use and benefit of defendant Johnson, and did thereafter and at all times down to on or about September 30, 1939, maintain and operate or cause to be maintained and operated, a building in Chicago at 3424 Lawrence Avenue, commonly known as the Albany Park Bank Building, in such a manner and under such circumstances as to conceal the fact that said building was the financial headquarters of said gambling houses, i. e., the place where checks were cashed and currency exchanged constituting the gains, profits and income derived from the operation of the various gambling houses more particularly referred to in Parts I to IV herein.

6. At various times between the dates of January 1, 1936 and December 31, 1939, expended currency for the use and benefit of defendant Johnson, in such a manner and under such circumstances as to conceal the source of said currency, said expenditures aggregating at least \$300,000.00.

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Part XIII

To Defendant Orrie Alexander:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. On or about August 22, and December 6, 1939, and February 16, 1940, appeared before a Federal grand jury at Chicago and did then and there testify falsely for the purpose, among others, of concealing the amount and source of the income of the defendant Johnson for each of the calendar years 1936 to 1939, inclusive, and thereby did then and there knowingly aid and abet said Johnson in wilfully attempting to evade and defeat the payment of a large part of his the said Johnson's income taxes due the United States of America for each of said calendar years.

2. (a) On or about March 5, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 11, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 6, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

167 (d) On or about March 13, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

3. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of, said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson,

All for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four count of the indictment.

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Part XIV.

To Defendant Bernice Downey:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. From July 20, 1938 to September 30, 1939 operated with defendant Stuart Solomon Brown the Lawrence Avenue Currency Exchange for the use and benefit of defendant Johnson and more specifically, for the purpose of furnishing banking facilities to the gambling establishments, hereinbefore named, so as to enable the said Johnson to conceal his interest therein and his income therefrom.

2. Removed from the premises occupied by said Lawrence Avenue Currency Exchange all of the books, records, papers and documents of said Lawrence Avenue Currency Exchange in October 1939, for the purpose of concealing from Internal Revenue officers of the United States the information therein contained concerning the income of said William R. Johnson for the years 1936, 1937, 1938 and 1939.

3. In November 1939 said defendant fled the jurisdic-

tion of the Court and deliberately absented herself for the purpose of avoiding service of process to testify to her knowledge of the income of said defendant, William R. Johnson, for the years 1936, 1937, 1938 and 1939.

4. Cashed checks, in conjunction with defendant Brown, through the Lawrence Avenue Currency Exchange, Chicago, all during the year 1938, aggregating at least \$194,557.53.

5. Cashed checks and exchanged currency through the Lawrence Avenue Currency Exchange, Chicago, in conjunction with defendant Brown, all during the year 1939, aggregating at least \$679,841.43.

170

Part XV

To Defendant Stuart Solomon Brown:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. From July 20, 1938 to September 30, 1939 operated with defendant Bernice Downey the Lawrence Avenue Currency Exchange for the use and benefit of defendant Johnson and more specifically, for the purpose of furnishing banking facilities to the said gambling establishments, hereinbefore named, so as to enable the said Johnson to conceal his interest therein and his income therefrom.

2. On or about November 1, 1939 fled from the city of Chicago to avoid service of process and the disclosure of his knowledge to agents of the Bureau of Internal Revenue of the income of the defendant Johnson for the years 1936, 1937, 1938 and 1939.

3. On or about October 1, 1939 agreed with defendant Bernice Downey that they would remove, conceal and destroy certain books and records of the Lawrence Avenue Currency Exchange pertaining to the income and expenditures of the defendant Johnson for the calendar years 1936, 1937, 1938 and 1939.

4. At diverse times in the months of January and February 1940, testified falsely before the Federal grand jury for the Northern District of Illinois at Chicago relative to certain matters within his knowledge pertaining to the income of the said defendant Johnson for the years 1936, 1937, 1938 and 1939.

171 5. Cashed checks through the Lawrence Avenue Currency Exchange, Chicago, all during the year

1938, in conjunction with defendant Bernice Downey, aggregating at least \$194,557.53.

6. Cashed checks and exchanged currency through the Lawrence Avenue Currency Exchange, Chicago, in conjunction with defendant Bernice Downey, all during the year 1939, aggregating at least \$679,841.43.

To defendant Reginald E. Mackay:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. Sometime during or about the month of December, 1939, said defendant fled the jurisdiction of the court and deliberately absented himself for the purpose of avoiding service of process to testify to his knowledge of the income of said defendant William R. Johnson for the years 1936, 1937, 1938 and 1939.

2. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from January 1 to September 30, inclusive, 1939, in an amount at this time unknown.

3. On February 11, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of January, 1937, showing the total number of employees as 89 and the total wages paid during said month as \$9,346.00.

4. On March 8, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of February, 1937, showing the total number of employees as 102 and the total wages paid during said month as \$10,545.00.

173 5. On April 6, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of March, 1937, showing the total number of employees as 94 and the total wages paid during said month as \$12,236.00.

6. On May 10, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for

the month of April, 1937, showing the total number of employees as 85 and the total wages paid during said month as \$5,368.00.

7. On June 7, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of May, 1937, showing the total number of employees as 87 and the total wages paid during said month as \$11,301.00.

8. On July 26, 1937, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act for the month of June, 1937, showing the total number of employees as 78 and the total wages paid during said month as \$2,672.00.

9. On April 26, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1938, showing 73 employees and \$9,654.00 wages paid.

174 10. On July 21, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 73 employees and \$18,947.00 wages paid.

11. On October 28, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 59 employees and \$13,121.00 wages paid.

12. On January 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing 48 employees and \$6,035.00 wages paid.

13. On April 5, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended March 31, 1939, showing 93 employees and \$22,872.00 wages paid.

14. On July 19, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 78 employees and \$16,239.00 wages paid.

15. On October 7, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1939, showing 21 employees and \$2,770.00 wages paid.

175 16. On January 13, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1937, showing the average number of employees quarterly as 87 and the total amount of wages paid to them during said calendar year as \$51,468.00.

17. On January 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals, under Title IX of the Social Security Act, for the calendar year 1938, showing the average number of employees quarterly as 31 and the total amount of wages paid to them during said calendar year as \$48,420.00.

18. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of, said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson, All for the purpose thereby of wilfully aiding, abetting inducing and procuring said Johnson wilfully to attempt
176 to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

177

Part XVII

To Defendant Edward Wait:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. (a) On or about March 15, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 10, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

(d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

2. Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, from January 1 to September 30, inclusive, 1939, in an amount at this time unknown.

3. Between the dates of January 1, 1938, and December 31, 1939, expended currency for the use and benefit of defendant Johnson at the Bon-Air Country Club, 178 Wheeling, Illinois, during 1938 and 1939, aggregating respectively for said years \$238,000.00 and \$232,000.00, or a total of \$470,000.00, in such a manner and under such circumstances as to conceal the fact that said currency belonged to said Johnson.

4. On July 30, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1938, showing 459 employees and \$51,512.04 wages paid.

5. On October 30, 1938, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended September 30, 1938, showing 371 employees and \$67,058.35 wages paid.

6. On January 5, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended December 31, 1938, showing no employees and no wages paid.

7. On July 31, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act covering the quarter ended June 30, 1939, showing 387 employees and \$69,016.74 wages paid.

8. On October 7, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an Employer's Tax Return under Title VIII of the Social Security Act

covering the quarter ended September 30, 1939, showing 443 employees and \$119,797.67 wages paid.

179 9. On January 6, 1939, filed with the Collector of Internal Revenue at Chicago, Illinois, an annual return of excise tax on employers of eight or more individuals under Title IX of the Social Security Act for the calendar year 1938, showing the average number of employees quarterly as 160 and the total amount of wages paid to them during said calendar year as \$118,570.39.

10. All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of, said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson, all for the purpose thereby or wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

180

Part XVIII.

To Defendant William R. Skidmore:

A Particularization of Other and Further Acts, and the Time and Place Thereof:

1. Conferred at frequent intervals, all during 1936 to 1939, inclusive, with defendant Johnson at 3500 Lake Shore Drive and 2840 South Kedzie Avenue, Chicago, Illinois.

2. All during the years 1936 to 1939, inclusive, furnished and caused to be furnished or delivered farm produce from the Pine Tree Dairy Farm located in McHenry County, Illinois (owned by said defendant Skidmore), to various of the defendant Johnson's gambling establishments.

3. Beginning with the calendar year 1936 and for each calendar year thereafter down to and including that of 1939, defendants Skidmore and Johnson caused their re-

spective individual income tax returns for each of said years to be made out by the same person.

4. On or about July 21, 1934, appeared as a witness for defendant Johnson at a hearing in the office of the Internal Revenue Agent in Charge at Chicago.

5. On or about May 26, 1937, acquired or caused to be acquired and thereafter continued to own and operate, or caused to be operated, a building located at 4715-17 West Irving Park Road, Chicago, Illinois, commonly known as the Portage Park Bank Building, which said building was used to house a gambling house, and a certain wire service headquarters essential to the gambling business of defendant Johnson.

181 6. All during the years 1936 to 1939, inclusive, assisted in the management and operation in and about the City of Chicago and Cook County of a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) caused no books or records to be kept or maintained reflecting the gains, profits and income derived from, or the ownership of, said gambling business, and (b) caused said gains, profits and income derived from said gambling business to be converted into coin or currency and delivered to said Johnson, all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment.

7. (a) On or about March 15, 1937, filed his individual income tax return for the calendar year 1936 with the Collector of Internal Revenue at Chicago, Illinois.

(b) On or about March 10, 1938, filed his individual income tax return for the calendar year 1937 with the Collector of Internal Revenue at Chicago, Illinois.

(c) On or about March 14, 1939, filed his individual income tax return for the calendar year 1938 with the Collector of Internal Revenue at Chicago, Illinois.

182 (d) On or about March 15, 1940, filed his individual income tax return for the calendar year 1939 with the Collector of Internal Revenue, Chicago, Illinois.

8. On August 25, 1938, made a statement under oath in Room 284 U. S. Court House, Chicago, in the presence of Internal Revenue Agent John T. Blocker and Special

Agents W. A. Sommers and C. L. Converse of the Bureau of Internal Revenue, Treasury Department.

9. On June 23, 1936, made a statement under oath in Room 475 U. S. Court House, Chicago, in the presence of Internal Revenue Agent N. M. Riewer and Special Agent W. A. Sommers of the Bureau of Internal Revenue, Treasury Department.

10. Engaged all during the years 1937, 1938 and 1939 in the gambling business in one form or another.

(Sgd) William J. Campbell,
William J. Campbell,
United States Attorney.

Filed
July 19,
1940.

184 And on, to wit, the 19th day of July, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court Exceptions to Government's Bill of Particulars in words and figures following, to wit:

185 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

EXCEPTIONS OF THE DEFENDANTS WILLIAM R. SKIDMORE, WILLIAM GOLDSTEIN, ANDREW J. CREIGHTON, JACK SOMMERS, EDWARD WAIT, JAMES A. HARTIGAN, JOHN M. FLANAGAN, ORRIE ALEXANDER, WILLIAM P. KELLY, REGINALD E. MACKAY, STUART SOLOMON BROWN AND BERNICE DOWNEY TO GOVERNMENT'S BILL OF PARTICULARS.

And now comes the defendant, William R. Skidmore, by William W. Smith, his attorney; the defendant, William Goldstein, by Leslie E. Salter, his attorney; and the defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, by Edward J. Hess, their counsel, and object and except to the Bill of Particulars supplied to them by the United States in pursuance to the order of this Court so to do, and respectfully represent unto the Court that said Bill of Particulars is deficient, vague and indefinite, and is not in reasonable compliance with the order of this Court entered herein on, to-wit, June

17, 1940, (as amended) in the respects hereinafter indicated.

These defendants and each of them respectfully represent unto the Court that in and by the order of this Court aforesaid, that, as to these defendants respectively, it was provided as follows, to-wit:

186 "1. A particularization of the act or acts, and at what time or times, and in what place or places, the aforesaid defendants, or either of them, aided, abetted, counselled, induced and procured the defendant, William R. Johnson, to do and perform the alleged unlawful offenses described in Counts 1, 2, 3 and 4, respectively, of the indictment."

The part and parts of said Bill of Particulars to which these defendants respectively object and except are as follows:

Part VI.

Paragraph 1.—For failure to specify dates, name of the defendant or defendants, respectively, who operated the alleged gambling business under the names itemized in said paragraph;

And for the further reason that all allegations commencing with the word "all" in line 8 of said paragraph to the end thereof are argumentative, and do not constitute specification of material facts proper to be contained in a Bill of Particulars;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 2.—For failure to specify the name or names of these defendants, respectively, and the time during which it is contended that they or either of them operated gambling businesses under the names specified in the preceding paragraph;

And for failure to specify the name or names, of these defendants, respectively, who were requested and directed by defendant, William R. Johnson, to fail to maintain or keep books of record;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson

to attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 3.—For failure to specify particular facts giving dates, names of defendants and names of places, of the business alleged to have been conducted by these defendants or either of them;

And for the further reason that said paragraph specifies no material facts of acts done by these defendants, or either of them, which it is contended constituted aiding and abetting of William R. Johnson to attempt to evade and defeat his income tax;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 4.—For failure to specify the name or names and the time or times that these defendants or either of them made trips to the Lawrence Avenue Currency Exchange;

And for failure to specify in what respect it is contended that the defendants Brown and Downey enumerated in this part of the Bill of Particulars, were able to receive from themselves certain packages of currency or coin;

188 And for failure to specify records of Lawrence Avenue Currency Exchange alleged to have been destroyed by defendant Brown or Downey, or either of them;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 5.—For failure to specify names of defendants other than Sommers and Hartigan with whom Johnson is alleged to have had conference;

And for failure to specify the general nature of the instructions alleged to have been given by Johnson;

And for inclusion in said paragraph from the word "all" in line 7 to the end that said paragraph, argumentative and immaterial matter;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to

attempt to evade and defeat income tax, by these defendants or any one of them.

Paragraph 6.—For failure to specify the act or acts done, the time or times when, the place or places where, and the name or names of these defendants (as required by the aforesaid order of this Court) alleged to have been done as set forth in this paragraph.

(Argumentatively, said paragraph makes recitations fully as general as those contained in the indictment with respect to which this Court ordered a Bill of Particulars);

189 And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax, by these defendants or any one of them.

Part VII—Jack Sommers.

Paragraph 1.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 2.—For failure to specify the amount of currency exchanged at The Northern Trust Company and at the Albany Park Deposit & Exchange, respectively;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 3.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 4.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

190 Paragraph 5.—For failure to specify the amount of currency exchanged at The Northern Trust Company and at the Albany Park Deposit & Exchange, respectively;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 6.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 7.—For failure to specify amount of currency exchanged at each of the named banks and exchanges, and what part by defendant, Sommers, and what part by defendant, Creighton;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 7(a)—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

191 Paragraph 8.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 8(a)—For failure to specify what checks were cashed and what currency was exchanged;

And for failure to specify the amount cashed or exchanged at either of the institutions mentioned;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 9.—For failure to specify the general nature of the alleged false statement;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 10.—For failure to specify the general nature of the alleged false testimony given before the Grand Jury by defendant, Sommers;

And for including, commencing with the words "and thereby" in the 7th line, to the end of said paragraph, argumentative and immaterial matter;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 11(a), 11(b), 11(c) and 11(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraphs 12 to 31, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 32(a), 32(b), 32(c) and 32(d)—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Jack Sommers.

Paragraph 33.—For failure to specify the time or times when, or the place or places where, that defendant, Jack Sommers, operated a gambling business in the City of Chicago for defendant, Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Jack Sommers, caused a gambling business to be managed and operated in and about the City of Chicago for defendant, Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant, 193 Jack Sommers, including the time or times when so converted, and the place or places from where con-

verted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part VIII—Andrew J. Creighton.

Paragraph 1.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 2.—For failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 3.—For failure to specify the amount of checks cashed at each of the named institutions;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant,

Andrew J. Creighton.

194 Paragraph 4.—For failure to specify the amount of currency exchanged at each of the institutions mentioned;

And for failure to specify what part of said currency was exchanged by defendant Creighton, and what part by defendant Sommers;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 5.—For failure to specify the amount of checks cashed and the amount of currency exchanged, respectively;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to

attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 6.—For failure to specify the alleged false testimony given before the Grand Jury which it is contended was for the purpose of concealing the amount and source of the income of defendant Johnson;

And for including in said paragraph from the word “and” in line 7 to the end thereof, argumentative and immaterial matter;

And for failure to specify, respectively, the counts and the alleged testimony in connection therewith which it is contended constituted aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant Creighton.

195 Paragraph 7(a), 7(b), 7(c), 7(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraphs 8 to 28, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 29(a), 29(b), 29(c), 29(d) and 29(e)—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Andrew J. Creighton.

Paragraph 30.—For failure to specify the time or times when, or the place or places where, that defendant, Andrew J. Creighton, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Andrew J. Creighton, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

196 And for failure to specify what gains, profits or income were converted into coin or currency by de-

fendant, Andrew J. Creighton, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part IX—William P. Kelly.

Paragraph 1.—For failure to state substance of the contents of the statement referred to;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William P. Kelly.

Paragraph 2.—For failure to state the substance of the false testimony referred to;

And for including the conclusions enumerated in the last 5 lines of said paragraph;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William P. Kelly.

197 Paragraphs 3(a), 3(b), 3(c) and 3(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William P. Kelly.

Paragraphs 4 to 24, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William P. Kelly.

Paragraph 25.—For failure to specify the time or times when, or the place or places where, that defendant, William P. Kelly, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, William P. Kelly, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant, William P. Kelly, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of 198 said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part X—John M. Flanagan.

Paragraphs 1(a), 1(b), 1(c) and 1(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting William R. Johnson to attempt to evade and defeat income tax by defendant, John M. Flanagan.

Paragraph 3.—For failure to specify the amounts of the checks alleged to have been cash and currency exchanged;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, John M. Flanagan.

Paragraphs 4 to 25, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, John M. Flanagan.

Paragraph 27.—For failure to specify the time or times when, or the place or places where, that defendant, John M. Flanagan, operated a gambling business in the City of Chicago for defendant Johnson;

199 And for failure to specify the time or times when, or the place or places where, defendant, John M. Flanagan, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant, John M. Flanagan, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant, Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part XI—James A. Hartigan.

Paragraph 1.—For failure to specify the substance of the statement made which it is alleged was false;

And for failure to state the count or counts to which it is contended that said act or acts are applicable.

Paragraph 2.—For failure to state the substance of the alleged false testimony given;

And for failure to specify the count it is contended that same is applicable.

200 Paragraphs 3(a), 3(b), 3(c) and 3(d)—For failure to specify the count of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, James A. Hartigan.

Paragraph 4.—For failure to specify the amount of checks cashed and the amount of currency exchanged;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, James A. Hartigan.

Paragraphs 5 to 26, both inclusive—For failure to specify

the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, James A. Hartigan.

Paragraph 27.—For failure to specify the time or times when, or the place or places where, that defendant, James A. Hartigan, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, James A. Hartigan, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

201 And for failure to specify what gains, profits or income were converted into coin or currency by defendant, James A. Hartigan, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part XII—William Goldstein.

Paragraph 1.—For failure to specify the substance of the alleged false testimony, and the count or counts of the indictment to which it is contended that same is applicable.

Paragraph 5.—For failure to specify the alleged manner and circumstances of operating the building in question which it is contended was done to conceal its ownership and nature and transaction in connection therewith;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William Goldstein.

Paragraph 6.—For failure to specify and particularize the time or times when, the place or places where, and the

amount of currency contended to have been expended 202 for the benefit of defendant Johnson by defendant Goldstein aggregating at least Three Hundred Thousand Dollars (\$300,000.00);

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable.

Part XIII—Orrie Alexander.

Paragraph 1.—For failure to specify the substance of the alleged false testimony, and for failure to specify the count or counts to which it is contended same is applicable;

And for including conclusions consisting of the last 5 lines of said paragraph.

Paragraphs 2(a), 2(b), 2(c), and 2(d)—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Orrie Alexander.

Paragraph 3.—For failure to specify the time or times when, or the place or places where, that defendant, Orrie Alexander, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Orrie Alexander, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant, 203 Orrie Alexander, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part XIV—Bernice Downey.

Paragraph 2.—For failure to specify books, records, etc., alleged to have been removed from Lawrence Avenue Currency Exchange;

And for including argumentative matter commencing from the word "for" in line 4 to the end of said paragraph;

And for failure to specify which count of the indictment it is contended said acts are applicable.

Paragraph 3.—To strike this paragraph as being immaterial and not constituting a proveable fact.

Part XV—Stuart Solomon Brown.

Paragraph 2.—To strike this paragraph as not constituting proveable facts.

Paragraph 3.—For failure to specify books, records, etc., of Lawrence Avenue Currency Exchange alleged to have been destroyed;

And for failure to specify which count of the indictment it is contended said acts are applicable.

204 Paragraph 4.—For failure to specify the substance of the false testimony referred to;

And for failure to specify the count or counts of the indictment to which it is contended same is applicable.

Part XVI—Reginald E. Mackay.

Paragraph 1.—To strike this paragraph as not constituting particularization of proveable facts.

Paragraph 2.—For failure to specify the amounts of checks cashed and currency exchanged, respectively;

And for failure to specify the count of the indictment which it is contended that said act or acts are applicable.

Paragraphs 3 to 17, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Reginald E. Mackay.

Paragraph 18.—For failure to specify the time or times when, or the place or places where, that defendant, Reginald E. Mackay, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Reginald E. Mackay, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

205 And for failure to specify what gains, profits or income were converted into coin or currency by defendant, Reginald E. Mackay, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 10 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

Part XVII—Edward Wait.

Paragraphs 1(a), 1(b), 1(c) and 1(d)—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, Edward Wait.

Paragraph 2.—For failure to specify the amount of checks cashed and the amount of currency exchanged during the period mentioned;

And for failure to specify which count of the indictment it is contended that said act or acts are applicable.

Paragraph 3.—For failure to specify the amount of currency expended during the period set forth in this paragraph and the manner and for what purpose the same was expended, which it is contended was for the use of defendant Johnson;

And for failure to specify the count or counts which it is contended that said act or acts apply, when the same are properly particularized.

206 Paragraphs 4 to 9, both inclusive—For failure to specify the count or counts of the indictment which it is contended that said act or acts, respectively, are applicable as constituting aiding and abetting of William R.

Johnson to attempt to evade and defeat income tax by defendant, Edward Wait.

Paragraph 10.—For failure to specify the time or times when, or the place or places where, that defendant, Edward Wait, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, Edward Wait, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income were converted into coin or currency by defendant, Edward Wait, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same properly particularized.

207

Part XVIII—William R. Skidmore.

Paragraph 5.—For failure to specify and explain the particularization in this paragraph with respect to the acquisition of said Portage Park Bank Building, in the light of substantially the same specifications in Part XII, Paragraph 4, that defendant Goldstein had performed said acts.

Paragraph 6.—For failure to specify the time or times when, or the place or places where, that defendant, William R. Skidmore, operated a gambling business in the City of Chicago for defendant Johnson;

And for failure to specify the time or times when, or the place or places where, defendant, William R. Skidmore, caused a gambling business to be managed and operated in and about the City of Chicago for defendant Johnson;

And for failure to specify the books or records that it is alleged were not maintained at said respective place or places;

And for failure to specify what gains, profits or income

were converted into coin or currency by defendant, William R. Skidmore, including the time or times when so converted, and the place or places from where converted, and the time or times and the amounts of delivery thereof to defendant Johnson;

And for including from the word "all" in line 11 of said paragraph to the end thereof, argumentative and immaterial matter;

And for failure to specify which count of the indictment it is contended each of said acts are applicable, when and if the same are properly particularized.

208 Paragraphs 7(a), 7(b), 7(c) and 7(d)—For failure to specify the count or counts of the indictment which it is contended said act or acts, respectively, are applicable as constituting aiding and abetting of William R. Johnson to attempt to evade and defeat income tax by defendant, William R. Skidmore.

Paragraph 8.—For failure to specify the substance of the statement mentioned, and the count or counts, and the manner which it is contended that same is applicable and constitutes aiding and abetting of defendant Johnson to attempt to evade and defeat income tax by defendant Skidmore.

Paragraph 9.—Same objection and exception as paragraph 8 above.

Paragraph 10.—For failure to state more specifically the time or times when, and the place or places where, and the means by or through which it is contended that such act or acts constituted aiding and abetting defendant Johnson to attempt to evade and defeat his income tax by defendant Skidmore, when said act or acts are properly particularized, including the count or counts which it is contended that the same is applicable.

209 We now wish to direct the Court's attention to a number of features of the Bill of Particulars, which we contend indicate the insufficiency and inaccuracy of said Bill almost to a point of design in its failure to meet the requirements of the order directing its presentation.

A.

Parts I to IV, inclusive, in giving alleged particulars of the source and amounts of income of defendant Johnson, avers (in substance) that said income all came from transactions of defendants, Sommers, Creighton and Flanagan,

(with some mention of one Downey, Foley and Gitzen, who are not defendants) as follows:

Part I —1936—Sommers;
—Creighton;
—Flanagan;

Part II —1937—Sommers;
—Creighton;

Part III—1938—Sommers;
—Creighton;

Part IV—1939—Sommers;

Yet:

By Part VI of the Bill, commencing at p. 12, we are advised that defendants Skidmore, Goldstein, Creighton, Sommers, Wait, Hartigan, Flanagan, Alexander, Kelly, Mackay, Brown and Downey, (1) managed and operated certain gambling business on a cash or currency basis; (2) at the request of defendant Johnson; and (3) transformed certain checks and currency into currency at Lawrence Avenue Currency Exchange, which currency constituted earnings of Johnson.

210 By Part IX, par. 25, p. 39, that defendant Kelly operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XI, par. 27, p. 52, that defendant Hartigan operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XIII, par. 3, p. 57, that defendant Alexander operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XVI, par. 18, p. 65, that defendant Mackay operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which

alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XVII, par. 10, p. 69, that defendant Wait operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into 211 coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

By Part XVIII, par. 6, p. 71, that defendant Skidmore operated a gambling business during the years 1936 to 1939; converted all the gains, profits and income thereof into coin or currency, and delivered same to Johnson, which alleged delivery is contrary to the particulars of receipts stated in aforesaid Parts I to IV.

B.

We list below (giving Part, paragraph and page of the Bill) a stereotyped paragraph of alleged particulars, which we contend is even more general in form than the allegations of the Indictment, and leave these defendants entirely in the dark as to what they will be called on to meet; throw wide open the door for admission of evidence, and make it impossible to meet such evidence.

"All during the years 1936 to 1939, inclusive, managed and operated and caused to be managed and operated in and about the City of Chicago and Cook County, a gambling business for the defendant Johnson, and in so doing knowingly and intentionally (a) failed to keep and maintain any books or records reflecting the gains, profits and income derived from, or ownership of said gambling business, and (b) converted said gains, profits and income derived from said gambling business into coin or currency and delivered the same to said Johnson, all for the purpose thereby of wilfully aiding, abetting, inducing and procuring said Johnson wilfully to attempt to evade and defeat the payment of a large portion of his individual income taxes due the United States of America for each of said calendar years 1936 to 1939, inclusive, as charged in the first four counts of the indictment."

212 Said section may be found at:

Part VII, par. 33, p. 24—as to defendant
Sommers;

Part VIII, par. 30, p. 34—as to defendant
Creighton;

- Part IX, par. 25, p. 39—as to defendant Kelly;
 Part X, par. 27, p. 45—as to defendant Flanagan;
 Part XI, par. 27, p. 52—as to defendant Hartigan;
 Part XIII, par. 3, p. 57—as to defendant Alexander;
 Part XVI, par. 18, p. 65—as to defendant Mackay;
 Part XVII, par. 10, p. 69—as to defendant Wait;
 Part XVIII, par. 6, p. 71—as to defendant Skidmore;

We submit, this does not approach a compliance with the Court's order. Specific exceptions to these sections appear elsewhere herein.

C.

Under this heading we submit an analysis of the alleged major income of Johnson and sources thereof set forth in the Bill of Particulars, and the act or acts charged to the aiders and abettors (giving the name) as going to make up said alleged income; the former data is shown in the left-hand column and the latter in the right, and followed by comments:

213

Johnson
Part I

Item:

3. From checks cashed at the Northern Trust Company, Chicago, during January to May, inclusive, 1936, by defendant, Jack Sommers:

\$111,578.00

4. From currency exchanged at the Northern Trust Company, Chicago, and Albany Park Deposit and Exchange Company, Chicago, all during the year 1936, by defendant Jack Sommers and one Downey:

\$148,400.00

1936

Sommers
Part VII

Item:

1. Cashied checks at the Northern Trust Company, Chicago, during January to May, inclusive, 1936, aggregating:

\$111,578.00

2. Exchanged currency at the Northern Trust Company, Chicago, and at the Albany Park Deposit and Exchange, Chicago, all during the year 1936, aggregating:

\$148,400.00

<p>5. From checks cashed at Albany Park Deposit and Exchange Company, Chicago, all during June to December, inclusive, 1936, by defendant Jack Sommers and one Downey:</p> <p style="text-align: right;"><u>\$255,401.40</u></p>	<p>3. Cashed checks at the Albany Park Deposit and Exchange, Chicago, during June to December, 1936 aggregating:</p> <p style="text-align: right;"><u>\$255,401.00</u></p>
	Creighton
	Part VIII
<p>6. From checks cashed and deposits made at the Mid-City National Bank of Chicago, and the I. C. State Bank of Chicago, all during the year 1936, by defendant Andrew J. Creighton and one William Foley, and one Fred Gitzen:</p> <p style="text-align: right;"><u>\$57,520.00</u></p>	<p>1. Cashed checks at Mid-City National Bank of Chicago, all during the year 1936, aggregating:</p> <p style="text-align: right;"><u>\$57,520.00</u></p>
	Flanagan
	Part X
<p>7. From checks cashed at the Lawndale Currency Exchange all during the year 1936, by defendant John M. Flanagan, and one Albert Couch:</p> <p style="text-align: right;"><u>\$ 16,198.60</u></p>	<p>2. Cashed checks at the Lawndale Currency Exchange, Chicago, all during the year 1936, aggregating:</p> <p style="text-align: right;"><u>\$ 20,000.00</u></p>
<p>Total: <u><u>\$589,098.60</u></u></p>	<p>Total: <u><u>\$592,900.00</u></u></p>

214 It will be observed that,—

(a) Part I, item 4, charges income to Johnson from currency exchanged by defendant Sommers and one Donwey, amount \$148,400.00; whereas, in Part VII, item 2, this currency is alleged to have been exchanged by Sommers only.

(b) Part I, item 5, charges income to Johnson from checks cashed by defendant Sommers and one Downey, amount \$255,401.40; whereas, in Part VII, item 3, these checks are alleged to have been cashed by Sommers only.

(c) Part I, item 6, charges income to Johnson from checks cashed and deposits made by defendant Creighton, and one William Foley and one Fred Gitzen, amount, \$57,520.00; whereas, in Part VIII, item 1, this item is charged as cashed checks (not deposits) by Creighton only.

(d) Part I, item 7, charges income to Johnson from checks cashed by defendant Flanagan and one Albert Couch, amount \$16,198.60; whereas, in Part X, item 2,

the cashing of these checks is charged to Flanagan only, and the amount is stated to be \$20,000.00.

215

1937

Johnson

Sommers

Part II

Part VII

Item :

Item :

4. From checks cashed by defendant Jack Sommers at the Albany Park Deposit and Exchange, from January to August, inclusive, 1937:

\$623,690.56

4. Cashed checks at the Albany Park Deposit and Exchange, Chicago, all during the year 1937, aggregating:

\$623,690.56

5. From checks cashed and deposits made at the Mid-City National Bank of Chicago, and the I. C. State Bank of Chicago, from January 1st, to August 31st, inclusive, 1937, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzten:

\$209,406.16

Creighton

Part VIII

2. Cashed checks at the Mid-City National Bank of Chicago, all during the year 1937, aggregating:

\$116,830.46

Sommers

Part VII

6. From currency exchanged by defendant Jack Sommers at the Northern Trust Company, and the Albany Park Deposit and Exchange during January to August, inclusive, 1937, and at the Mid-City National Bank of Chicago, by defendant Andrew J. Creighton, from January to August, inclusive, 1937:

\$ 54,350.00

5. Exchanged currency at the Northern Trust Company, Chicago, and at the Albany Park Deposit and Exchange, Chicago, all during the year 1937:

Not Given

Total: \$887,446.72

216 It will be observed that,—

(a) Part II, item 4, charges income to Johnson from checks cashed by defendant Sommers from January to August, inclusive, 1937, amount \$623,690.56; whereas, in Part VII, item 4, charges the cashing of these checks to have been done during the entire year of 1937.

(b) Part II, item 5, charges income to Johnson from checks cashed and deposits made from January 1st to August 31st, inclusive, 1937, by defendant Creighton and one

William Foley and one Fred Gitzen, amount \$209,406.16; whereas, no such act appears in particulars as to Creighton. There does appear in Part VIII, item 2, checks cashed by Creighton only during the entire year 1937, aggregating \$116,890.46, which item is not shown as income in particulars as to Johnson.

(c) Part II, item 6, charges income to Johnson from currency exchanged by defendant Sommers, from January to August, 1937, and by defendant Creighton, amount \$54,350.00; whereas, no such act appears in particulars as to Creighton. There is shown in Part VII, item 5, in particulars as to Sommers the charge of currency exchanged during the year 1937, but no amount given.

217

1938

Johnson

Sommers

Part III

Part VII

Item:

Item:

4. From checks cashed by defendant Jack Sommers at the Albany Park Deposit and Exchange during February 1st to July 20th, inclusive, 1938:

6. Cashed checks at the Albany Park Deposit and Exchange, Chicago, all during the year 1938, aggregating:

\$376,783.14

\$376,783.14

5. From checks cashed by defendant Jack Sommers at the Lawrence Avenue Currency Exchange during July 21st to December 31st, inclusive, 1938:

- 7(a) Cashed checks at the Lawrence Avenue Currency Exchange during July 21st to December 31st, inclusive, 1938, aggregating:

\$194,557.53

\$194,557.53

Creighton

Part VIII

6. From checks cashed and deposits made at the Mid-City National Bank of Chicago, and the I. C. State Bank of Chicago, from March 1st to December 31st, inclusive, 1938, by defendant Andrew J. Creighton and one William Foley and one Fred Gitzen:

3. Cashed checks at the Mid-City National Bank of Chicago, and the Washington Park Currency Exchange, Chicago, all during the year 1938, aggregating:

\$139,334.95

\$139,334.95

Sommers

Part VII

7. From currency exchanged by the defendant Jack Sommers at the Albany Park Deposit and Exchange, Lawrence Avenue Currency Exchange, and Northern Trust Company, and by Andrew J. Creighton at the Mid-City National Bank, all during the year 1938:

\$250,000.00

Total: \$960,675.62

7. Exchanged currency at the Albany Park Deposit and Exchange Co., Chicago, the Lawrence Avenue Currency Exchange, Chicago, the Mid-City National Bank of Chicago, and the Northern Trust Co., Chicago, (together with A. J. Creighton) all during the year 1938, aggregating:

\$250,000.00

Total: \$960,675.62

218 It will be observed that,—

(a) Part III, item 4, charges income to Johnson from checks cashed by defendant Sommers, February 1st to July 20, 1938, amount \$376,783.14; whereas, in Part VII, item 6, charges the cashing of these checks during the entire year of 1938.

(b) Part III, item 6, charges income to Johnson from checks cashed and deposits made at Mid-City National Bank, and I. C. State Bank from March 1st to December 31, 1938, by defendant Creighton and one William Foley and one Fred Gitzen; whereas, Part VIII, item 3, particularized as to defendant Creighton as checks cashed (not deposits) at Mid-City National Bank, and Washington Park Currency Exchange, during the entire year of 1938.

(c) Part III, item 7, charges as income to Johnson from currency exchange by defendant Sommers at Albany Park Deposit and Exchange, Lawrence Avenue Currency Exchange, and Northern Trust Company, and by defendant Creighton at Mid-City National Bank, during 1938, amount \$250,000.00; whereas, Part VII, item 7, charges this currency to have been exchanged at the four (4) named institutions by defendant Sommers, merely suggesting (together with A. J. Creighton). The amount as to each is not stated.

219

1939

Johnson

Sommers

Part IV

Part VII

Item:

Item:

4. From checks cashed and currency exchanged by defendant Jack Sommers at the Lawrence Avenue Currency Exchange, and the Northern Trust Company, from January 1st to September 30th, inclusive, 1939:

\$936,551.43

8. Exchanged currency at the Northern Trust Co., Chicago, all during the year 1939, aggregating:

\$100,000.00

- 8(a) Cashed checks and exchanged currency at the Lawrence Avenue Currency Exchange, Chicago, and the Northern Trust Co., Chicago, from January 1st, to September 30th, inclusive, 1939, aggregating:

\$ 836,551.43

Total: \$1,036,551.43

220 It will be observed that,—

Part VII, item 8, particularizes currency exchanged by defendant Sommers at Northern Trust Company during year 1939, amount \$100,000.00, which is not shown in particulars of income as to Johnson.

All of which inaccuracies, insufficiencies and contradictory statements make for extreme confusion and render it impossible for these defendants to properly prepare their defenses, which they would have been able to do had the plaintiff complied with the order of this Court with respect to the character and kind of Bill of Particulars it should supply herein.

Wherefore, these defendants, and each of them, respectfully submit that the Government has not fully and fairly complied with the order of this Court entered herein on to-wit, June 17, 1940, (as amended) as hereinabove set forth, and has furnished information of a confusing and inaccurate nature and incapable of being harmonized, and respectfully move the Court for the entry of an order or orders as follows:

(a) Directing the Government to amplify its Bill of Particulars with reference to these defendants, and each of them, by supplying the information herein indicated to have been omitted; and

221 (b) To strike from said Bill of Particulars each and every section, and parts of sections, which do not fairly comply with said order of this Court, and particularly the nine (9) sections thereof itemized herein at p. 28; and

(c) To strike from said Bill of Particulars all sections, and parts of sections, containing conclusions and arguments rather than facts and which are hereinabove specifically referred to; and

(d) In the alternative of sub-sections (a), (b) and (c), to strike the entire Bill of Particulars as not fairly meeting the requirements of the order of this Court of June 17, 1940, (as amended), nor representing a fair effort to comply therewith;

And for such other order and orders in the premises as the Court may deem appropriate.

(Sgd) William W. Smith,
Attorney for William R. Skidmore.

(Sgd) Leslie E. Salter,
Attorney for Defendant, Wm. Goldstein.

(Sgd) Edward J. Hess,
Attorney for Defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey.

(For the convenience of the Court there is attached hereto an index to said Bill of Particulars, giving the parts and pages thereof.)

222

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Filed
July 22,
1940.

223 And on, to wit, the 22nd day of July, A. D. 1940, came William R. Johnson by his attorneys and filed in the Clerk's office of said Court a Motion for a More Specific Bill of Particulars in words and figures following, to wit:

224 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

**MOTION OF DEFENDANT, WILLIAM R. JOHNSON,
FOR A MORE SPECIFIC BILL OF PARTICULARS.**

Now comes the defendant, William R. Johnson, by George F. Callaghen, his attorney, and respectfully moves the Court to require the United States Attorney to furnish to this defendant a more specific bill of particulars, and in support of said motion shows unto the Court:

A. That he is not advised, is not aware of, and is wholly unable by reason of the vagueness and indefiniteness and the lack of information of the charges laid against him in said indictment and in the bill of particulars heretofore filed, to prepare and defend himself against said indictment and each count thereof, and that unless he be apprised by a more specific bill of particulars of the allegations and charges against him in apt time prior to the trial of said cause, he will suffer irreparable harm and injury, will be subjected to and surprised by evidence sought to be introduced by the United States of America upon the trial of said cause, and will be unable to meet or cope with unexpected evidence. The defendant, therefore, files this petition for a further and more specific bill of particulars.

225 B. On June 17, 1940, an order was entered in this cause directing the said United States Attorney to furnish to the defendant, Johnson:

1. An itemization as to the source, time of receipt and the amount of money derived, had and received by the defendant, William R. Johnson, comprising the figures and amounts stated to be the gross income of the defendant, William R. Johnson, in Counts 1, 2, 3 and 4 of the indictment, to wit:

\$607,399.48 as set forth in Count 1 of the indictment.

\$880,949.94 as set forth in Count 2 of the indictment.

\$959,908.28 as set forth in Count 3 of the indictment.

\$932,571.96 as set forth in Count 4 of the indictment.

2. An itemization and description as to what books and records of the defendant, William R. Johnson, were concealedd and caused to be concealed, as charged in Counts 1, 2, 3 and 4 of the indictment.

C. The bill of particulars heretofore filed is not a compliance with the said order for the following reasons:

1. It is vague, indefinite, uncertain and evasive.

2. It does not set forth the itemization required by said order nor the source, time of receipt and amount of money derived, had and received by the defendant, Johnson, with the particularity required by said order.

3. The said bill of particulars contains various statements and figures which are inconsistent and repugnant.

4. Any attempted analysis of the facts and figures contained therein leads only to hopeless confusion and leaves the defendant in a dilemma as to what is contended was taxable income.

226 D. For further ground of his motion the defendant shows to the Court the following insufficiencies and vague allegations of said bill of particulars.

Part I.

(Year 1936)

1. Item 3, page 1, fails to specify the time of receipt or the amount of any of the checks mentioned therein, and the amount of \$111,578.60 does not constitute an itemization as required in the order of June 17, 1940.

2. Item 4, page 2, fails to specify the time of receipt and an itemization of the currency exchanged at the two banking institutions mentioned therein, and fails to specify

an itemization of the amount each of the two persons mentioned therein exchanged at said respective banking institutions, and the gross figure of \$148,400.00 does not constitute an itemization as required in the said order.

3. Item 5, page 2, fails to specify the time of receipt and the amount of any check mentioned therein and the amount and itemization of the checks cashed by the two persons named therein. Further, the sum of \$255,401.40 does not constitute an itemization as required in the said order.

4. Item 6, page 2, fails to specify what portion of the amount of \$57,520.00 constitutes checks cashed and what portion is deposits made, and fails to specify with respect thereto the specific amounts handled by the two banking institutions named therein, and fails to particularize as to each of the three individual persons named therein.

227 This said item does not constitute an itemization within the meaning and intendment of the order heretofore entered.

5. Item 7, page 2, fails to specify the time of receipt and the amount of any check mentioned therein and the amount and itemization of the checks cashed by the two persons named therein. Further, the sum of \$16,198.60 does not constitute an itemization as required in the said order.

6. Item 8, page 2, the listing of, to wit, 22 alleged gambling establishments on pages 2 and 3 does not constitute an itemization as to the source of the amount of money had and received by the defendant, Johnson, during the year 1936 as required by said order.

Part II.

(Year 1937)

1. Item 4, page 4, fails to specify the time of receipt or the amount of any of the checks mentioned therein, and the amount of \$623,690.56 does not constitute an itemization as to the source, time of receipt and amount of money had and received by the defendant, Johnson, as required by said order.

2. Item 5, page 4, fails to specify and particularize as to the amount of checks cashed and deposits made respectively at the two banking institutions mentioned therein; fails to specify the source, time of receipt and the amount

of the respective checks and deposits, and fails to specify in what amount checks were cashed and deposits made by the three respective persons named therein. The amount of \$209,406.16 does not constitute an itemization as to the source, time of receipt and the amount of money had and received by the defendant, Johnson, in accordance with the said order of June 17, 1940.

3. Item 6, page 4, fails to specify the time of receipt and the specific amounts of currency exchanged by Jack Sommers at the two banking institutions named therein, and fails to specify the time of receipt and the specific amounts of the currency exchanged at the Mid-City National Bank by Andrew Creighton during the period mentioned therein. Said item does not constitute an itemization as to the source, time of receipt and amount of money received by the defendant, Johnson, as required by said order.

4. Item 7, page 5, the listing of, to wit, 22 alleged gambling establishments on page 5 does not constitute an itemization as to the source of the amount of money had and received by the defendant, Johnson, during the year 1937 as required by said order.

Part III.

(Year 1938)

1. Item 4, page 6, fails to specify the time of receipt or the amount of any of the checks mentioned therein, and said lump figure of \$376,783.14 does not constitute an itemization as to the source, time of receipt and amount of money received by the defendant, Johnson, as required by said order of June 17, 1940.

2. Item 5, page 6, fails to specify the time of receipt or the amount of any of the checks mentioned therein, and said lump figure of \$194,557.53 does not constitute an itemization as to the source, time of receipt and amount of money received by the defendant, Johnson, as required by said order of June 17, 1940.

3. Item 6, page 6, fails to specify what part of the figure therein named constituted checks cashed and what part deposits made at the two respective banking institutions named therein, and the specific checks cashed and deposits made respectively by the three persons named therein. Said item and the figure of \$139,334.95 mentioned therein does not constitute the itemization required by the order of June 17, 1940.

4. Item 7, page 6, fails to specify the various and respective amounts of currency exchanged by the defendant, Sommers, at the three respective banking institutions named therein, and fails to specify and itemize the time of receipt and the respective amounts exchanged by the two persons mentioned therein constituting the gross figure of \$250,000.00. Said item is not an itemization as to the source, time of receipt and amount of money had and received by the defendant, Johnson, as required in the said order of June 17, 1940.

5. Item 6, page 6, the listing of, to wit, 22 alleged gambling establishments on page 7 does not constitute an itemization as to the source of the amount of money had and received by the defendant, Johnson, during the year 1938 as required by said order.

(Year 1939)

1. Item 4, page 8, fails to specify and distinguish the portion of the figure mentioned therein as checks cashed and currency exchanged, and fails to specify and itemize the amount of checks cashed and currency exchanged by Jack Sommers at the two respective banking institutions mentioned therein. The gross amount of \$936,551.43 mentioned in said item does not constitute an itemization as to the source, time of receipt and the amount of money had and received by the defendant, Johnson, in accordance with the order of June 17, 1940.

2. Item 5, page 8, the listing of, to wit, 22 alleged gambling establishments on pages 8 and 9 does not constitute an itemization as to the source of the amount of money had and received by the defendant, Johnson, during the year 1939 as required by said order.

Part V.

1. Said items 1 to 9, inclusive, do not constitute an itemization and description of the books and records of the defendant, William R. Johnson, as required in the order of June 17, 1940.

The defendant hereby incorporates and makes a part hereof, as though fully set forth herein, the exceptions of the defendants, William R. Skidmore, William Goldstein,

Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. MacKay, Stuart Solomon Brown and Bernice Downey to the Government's bill of particulars filed simultaneously herewith.

231 This defendant further shows that by the mingling together of the large amounts in said bill of particulars as hereinabove set forth, and the generalization as to persons, dates, and banking institutions, this defendant is confused, perplexed and is unable to properly prepare his defense to the indictment herein.

This defendant further represents that he cannot receive a fair and impartial trial and cannot prepare and submit defenses to each and all of the charges against him unless he is furnished with a more specific bill of particulars, and that he has no means of obtaining such information or any of such information except through and by means of a more specific and definite bill of particulars.

This defendant further alleges that unless the prosecution is directed to furnish a more specific bill of particulars, there will be no means available now or hereafter to identify the offenses charged in the indictment and each count thereof and, for want of such means, said indictment furnishes no protection to this defendant against other and further indictments for the same alleged offenses, nor can any verdict entered upon said indictment be pleaded in bar of further prosecutions for the same alleged offenses.

Wherefore, your petitioner prays that an order be entered herein requiring the United States Attorney to furnish to your petitioner, within a reasonable time to be fixed by the Court, a further and more specific bill of particulars of all and every of the matters alleged in said indictment, and, more specifically, a bill of par-
232 ticulars in compliance and accordance with the order of this Court heretofore entered on June 17, 1940.

And your petitioner will ever pray.

(Sgd.) William R. Johnson,

Defendant,

By (Sgd.) George F. Callaghan,

Attorney for Defendant.

Entered
July 24,
1940.

233 And afterwards, to wit, on the 24th day of July, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

234 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

Wednesday, July 24, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

Comes now the United States by the United States Attorney come also the defendants William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey by their attorneys and thereupon this cause coming on to be heard upon the motion of William R. Johnson for a more specific bill of particulars after arguments of counsel and due deliberation by the Court the said motion is overruled and denied to which ruling of the Court the defendant by his attorney duly excepts and thereupon this cause coming on further to be heard on the exceptions of defendants, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey to the Government's bill of particulars after arguments of counsel and due deliberation by the Court said exceptions are overruled to which ruling of the Court the defendants by their attorneys duly except.

235 And afterwards, to wit, on the 13th day of August, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge appears the following entry, to wit:

236 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

Entered
Aug. 13,
1940.

Tuesday, August 13, A. D. 1940.

Present: Honorable William H. Holly, Judge.

On motion of the United States Attorney it is Ordered that leave be and the same is hereby given to file instant a supplement to the bill of particulars heretofore filed herein.

237 And on, to wit, the 13th day of August, A. D. 1940. came the United States by their attorneys and filed in the Clerk's office of said Court Supplement to the Bill of Particulars in words and figures following, to wit:

238 IN THE DISTRICT COURT OF THE UNITED STATES
OF AMERICA.
• • (Caption—32168) • •

Filed
Aug. 13,
1940.

SUPPLEMENT TO THE BILL OF PARTICULARS.

Now comes the United States of America, by William J. Campbell, United States Attorney for the Northern District of Illinois, and files this, its Supplement to the Bill of Particulars, and hereby furnishes to the defendants the following additional information:

1) With reference to Parts I, II, III, IV, V and VI of the original Bill of Particulars, wherein are set forth the names of certain gambling establishments, is hereby added the following:

3332 N. Milwaukee Avenue

3946 School Street

2133 S. Kedzie Avenue

3209 W. Ogden Avenue

400 Club, Desplaines and Madison Streets, Forest Park,

and divers other gambling establishments, the exact names and addresses of which cannot now be stated.

2) As to Part IV of the original Bill of Particulars, as to defendant William R. Johnson, under Count IV of

the indictment for the calendar year 1939, to the itemization of income as set forth in the original Bill of Particulars, is hereby added items of increase as follows:

239 From currency exchanged at the Northern Trust Company during the year 1939 by defendant Jack Sommers \$100,000

From currency exchanged and checks cashed at the Portage Park Currency Exchange, Chicago, by Reginald E. Mackay, during the year 1939 \$ 40,600

3) As to Part I of the original Bill of Particulars as to defendant William R. Johnson, to the itemization of gross income as set out in said Part I of said original Bill of Particulars, is hereby added the following:

From currency exchanged at the Liberty National Bank, Chicago, by defendant John Flanagan, during the year 1936 \$ 50,000

4) In Part X, of the original Bill of Particulars, as to defendants John M. Flanagan, being a particularization of other and further acts and the time and place thereof, is hereby added the following:

Said defendant exchanged currency at the Liberty National Bank, Chicago, during the year 1936, in an amount aggregating .. \$ 50,000

5) As to Part XVI of the original Bill of Particulars, as to defendant Reginald E. Mackay, being a particularization of other and further acts and the time and places thereof, is hereby added the following:

Said defendant exchanged currency and cashed checks at the Portage Park Currency Exchange, Chicago, during the year 1939, in the aggregate total sum of \$ 40,600

(Sgd.) William J. Campbell,
William J. Campbell,

United States Attorney.

240 And afterwards, to wit, on the 27th day of August, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

Entered
Aug. 27,
1940.

241 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

Tuesday, August 27, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This cause being called for trial comes the United States by the United States Attorney come also the defendants William R. Johnson alias W. R. Johnson alias Bill Johnson, William R. Skidmore alias W. R. Skidmore alias Billy Skidmore, William Goldstein alias Bill Goldstein, Andrew J. Creighton alias A. J. Creighton alias Red Creighton, Jack Sommers alias J. Sommers, Edward Wait alias Ed Wait, James A. Hartigan alias J. A. Hartigan alias Jimmie Hartigan alias J. A. Hart, John M. Flanagan alias J. Flanagan, Orrie Alexander, William P. Kelly alias Bill Kelly, Reginald E. Mackay alias Reg Mackay, Stuart Solomon Brown alias S. S. Brown and Bernice Downey in their own proper persons whereupon the defendants William R. Skidmore and William R. Johnson by their attorneys enter their motions for a continuance which motion is denied and on motion of the United States Attorney it is

Ordered this cause be and the same is hereby dismissed as to the defendants William R. Skidmore, William Goldstein, Orrie Alexander, and Bernice Downey.

On motion of Edward A. Fisher, Esquire, it is ordered leave be and the same is hereby given to withdraw his appearance for the defendant Stuart Solomon Brown thereupon this cause coming on for trial as to the defendants

William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown and the said defendants having heretofore interposed pleas of not guilty to the indictment filed herein against them put themselves upon the country and it is ordered by the Court that the defendants' Chal-

lenges to Array be and the same is hereby overruled to which ruling of the Court the defendants by their attorneys duly except it is ordered that a Jury come whereupon comes a Jury of true and lawful men and women to wit:

Mrs. Paul Van Auken also known as Mrs. Agnes Van Auken

Warren L. Fillingham

Mrs. Margaret N. Brown

Mrs. Mary F. Brevillier

N. P. Eipers

Philip R. Ames

Mrs. William B. Cobb also known as Mrs. Ruth Cobb

Morton L. Pereiza

Otto Papke

Glen A. Esh

Richard L. Rees

George M. Inman

Mrs. Bertha Robinson George and Henry L. Hagenbring who were duly elected, tried and sworn well and truly to try the issues joined herein and a true verdict render according to law and the evidence and the usual hour of adjournment having arrived it is ordered this cause be and the same is hereby adjourned to August 28, A. D. 1940, 10:00 A. M.

243 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

ORDER.

The Court finds that this court is about to try the defendants in this cause and that in the opinion of the Judge of this court the trial is likely to be a protracted one and that two additional jurors, to be known as alternate jurors, should be called;

It Is Therefore Ordered that two additional jurors, to be known as alternate jurors, be called at this time which is immediately after the jury has been empaneled and sworn.

Barnes,
Judge.

Entered Aug. 27, 1940.

244 And on, to wit, the 25th day of September, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court certain Motion for Finding of Not Guilty in words and figures following, to wit: Filed
Sept. 25,
1940.

245 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

MOTION.

And now at the close of all evidence offered and admitted on behalf of the Government, come the defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown, respectively, and on behalf of each individually, by Edward J. Hess and George F. Callaghan, their attorneys, and move the Court to instruct the jury to find said defendants, and each of them respectively, not guilty.

This motion is made on behalf of each of said defendants individually as to each of Counts 1, 2, 3, 4 and 5 of the indictment respectively.

Edward J. Hess,
George F. Callaghan,
Attorneys for said Defendants.

Denied.

246 And on, to wit, the 25th day of September, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court certain Motion to Elect in words and figures following, to wit: Filed
Sept. 25,
1940.

247 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

MOTION.

Now come the defendants, William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Wm. P. Kelly, Reginald Mackay and Stuart S. Brown, severally, at the close of the

evidence for the Government, and move the Court to require the Government to elect:

1. Whether it shall proceed upon Counts One to Four, inclusive, of the indictment, or upon Count Five of the indictment.

2. Upon which Count of the indictment it will proceed.

William R. Johnson,
Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
Wm. P. Kelly,
Reginald Mackay,
Stuart S. Brown,

By Floyd E. Thompson,
Edward J. Hess,
George F. Callaghan,

Their Attorneys.

(Denied.)

Filed
Sept. 25,
1940.

248 And on, to wit, the 25th day of September, A. D. 1940, came the defendant Johnson by his attorneys and filed in the Clerk's office of said Court Motion for Directed Verdict of Not Guilty in words and figures following, to wit:

249 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

**MOTION OF DEFENDANT, WILLIAM R. JOHNSON,
FOR DIRECTED VERDICT OF NOT GUILTY.**

And now comes William R. Johnson, one of defendants, at the close of the evidence for the prosecution, and moves that the Court instruct the jury to find him not guilty.

And now again comes said defendant and specifically moves that the Court instruct the jury to find him not guilty of the offense charged in Count One of the indictment.

And now again comes said defendant and specifically moves that the Court instruct the jury to find him not guilty of the offense charged in Count Two of the indictment.

And now again comes said defendant and specifically

moves that the Court instruct the jury to find him not guilty of the offense charged in Count Three of the indictment.

And now again comes said defendant and specifically moves that the Court instruct the jury to find him not guilty of the offense charged in Count Four of the indictment.

250 And now again comes said defendant and specifically moves that the Court instruct the jury to find him not guilty of the offense charged in Count Five of the indictment.

William R. Johnson,
Defendant.

Floyd E. Thompson,
Attorney.
Denied.

251 And afterwards, to wit, on the 25th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Filed
Sept. 25,
1940.

252 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

Wednesday, September 25, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day again comes the United States by the United States Attorney come also the defendants William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown in their own proper persons and the jury heretofore empaneled for the trial of said cause also come and thereupon at close of the Government's evidence the defendant William R. Johnson by his attorney enters his motion for a finding of not guilty as to the indictment and as to each count thereof and the defendants Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown respectively and individually enter their motions

for finding of not guilty as to each count of the indictment after arguments of counsel said motions are overruled and denied to which ruling of the Court the defendants by their attorneys duly except whereupon the defendants by their attorneys enter their motions that the Government elect whether it shall proceed upon counts 1 to 4 inclusive or upon count 5 of the indictment and upon which counts of the indictment it will proceed after arguments of counsel said motion is denied to which ruling of the Court the defendants by their attorneys duly except and it is further ordered the trial of said cause be and the same is hereby continued to September 26, 1940 at 10 A. M.

Filed
Oct. 10,
1940.

253 And on, to wit, the 10th day of October, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court Motion to Elect in words and figures following, to wit:

254 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

MOTION.

Now come the defendants, William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Wm. P. Kelly, Reginald Mackay and Stuart S. Brown, at the close of all of the evidence, and severally renew their motion to require the Government to elect upon which Count of the indictment it will proceed, and in support of said motion show unto the Court:

1. That the defendant aiders and abettors are by Count One of the indictment charged with having aided and abetted the defendant, William R. Johnson, in the commission of the offense described in said First Count "during the calendar year of 1936 and up to March 15, 1937, and continuously thereafter up to and including the date of the filing of this indictment."

2. That the defendant aiders and abettors are by Count Two of the indictment charged with having aided and abetted the defendant, William R. Johnson, in the commission of the offense described in said Second Count
255 "during the calendar year of 1937 and up to March 15, 1938, and continuously thereafter up to and including the date of the filing of this indictment."

3. That the defendant aiders and abettors are by Count Three of the indictment charged with having aided and abetted the defendant, William R. Johnson, in the commission of the offense described in said Third Count "during the calendar year of 1938 and up to March 15, 1939, and continuously thereafter up to and including the date of the filing of this indictment."

4. That the defendant aiders and abettors are by Count Four of the indictment charged with having aided and abetted the defendant, William R. Johnson, in the commission of the offense described in said Fourth Count "during the calendar year of 1939 and up to March 15, 1940, and continuously thereafter up to and including the date of the filing of this indictment."

5. That it is charged in the Fifth Count of the indictment that "from January 1, 1936, and for a long time prior thereto and up to and including the date of the filing of this indictment" the defendants did conspire to defraud the United States of income taxes which should become due and which did in fact become due the United States from the principal defendant, William R. Johnson, for the calendar years 1936, 1937, 1938 and 1939.

6. That in and by said indictment it is attempted to charge that these defendants were engaged in five separate, several, independent conspiracies, all existing throughout the same period of time.

7. That the proof offered in support of each Count in the indictment is the same.

8. That the proof offered to support the charges contained in Counts One to Four, inclusive, of the indictment, is the same proof offered and received in support of the charge contained in the Fifth Count of the indictment.

Wm. R. Johnson,
Andrew Creighton,
Jack Sommers,
Edward Wait,
James Hartigan,
John Flanagan,
Reginald Mackay,
Stuart S. Brown,
Wm. P. Kelly,

Defendants.

Floyd Thompson,
Edward Wait,
George F. Callaghan,

Attorneys for Defendants.
Denied.

Filed
Oct. 10,
1940.

257 And on, to wit, the 10th day of October, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court Motion for Directed Verdict of Not Guilty in words and figures following, to wit:

258 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

MOTION OF DEFENDANTS, ANDREW J. CREIGHTON, JACK SOMMERS, EDWARD WAIT, JAMES A. HARTIGAN, JOHN M. FLANAGAN, WM. P. KELLY, REGINALD MACKAY AND STUART S. BROWN, FOR DIRECTED VERDICT OF NOT GUILTY.

And now come Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Wm. P. Kelly, Reginald Mackay and Stuart S. Brown, defendants herein, at the close of all the evidence, and severally move that the Court instruct the Jury to find them, and each of them, respectively, not guilty.

And now again come said defendants and severally specifically move that the Court instruct the jury to find each of them, respectively, not guilty of the offense charged in Count One of the indictment.

And now again come said defendants and severally specifically move that the Court instruct the jury to find each of them, respectively, not guilty of the offense charged in Count Two of the indictment.

And now again come said defendants and severally specifically move that the Court instruct the jury to find
259 each of them, respectively, not guilty of the offense charged in Count Three of the indictment.

And now again come said defendants and severally specifically move that the Court instruct the jury to find each of them, respectively, not guilty of the offense charged in Count Four of the indictment.

And now again come said defendants and severally specifically move that the Court instruct the jury to find each

of them, respectively, not guilty of the offense charged in Count Five of the indictment.

Andrew J. Creighton,
Jack Sommers,
Edward Wait,
James A. Hartigan,
John M. Flanagan,
William P. Kelly,
Reginald Mackay,
Stuart S. Brown,
Defendants.

Edward J. Hess,
George F. Callaghan,
Attorneys for Defendants.
Denied.

260 And afterwards, to wit, on the 10th day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered
Oct. 10,
1940.

261 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

Thursday, October 10, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day again comes the United States by the United States attorney come also the defendants William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly, Stuart Solomon Brown, Andrew J. Creighton, Edward Wait, and Reginald E. Mackay in their own proper persons, and the jury heretofore empaneled for the trial of said cause also come and thereupon at the close of all the evidence the defendants' by their attorneys enter their motion to withdraw a juror and declare a mistrial which motion is denied to which ruling of the Court the defendants by their attorneys duly except whereupon each defendant severally by his attorney enters herein his motion for a directed verdict of not guilty as to each count of the indictment generally which motion is denied to which ruling of the Court each defendant by his attorney duly

excepts whereupon the defendants by their attorneys enter their motion that the Government elect upon which count of the indictment it will proceed which motion is denied to which ruling of the Court each defendant by his attorney duly excepts, and the jury having heard the evidence by the parties adduced and arguments of counsel in part and the usual hour of adjournment having arrived it is ordered this cause be and the same is hereby continued for further hearing to October 11th, A. D. 1940 at 11:00 A. M.

Entered
Oct. 12,
1940.

262 And afterwards, to wit, on the 12th day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entries, to wit:

263 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

Saturday, October 12, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day again comes the United States by the United States Attorney come also the defendants William R. Johnson alias W. R. Johnson alias Bill Johnson, Jack Sommers alias J. Sommers, James A. Hartigan alias J. A. Hartigan alias Jimmie Hartigan alias J. A. Hart, John M. Flanagan alias J. Flanagan, William P. Kelly alias Bill Kelly, Stuart Solomon Brown alias S. S. Brown, Andrew J. Creighton alias A. J. Creighton alias Red Creighton, Edward Wait alias Ed Wait and Reginald E. Mackay alias Reg Mackay in their own proper persons and the Jury heretofore empaneled for the trial of said cause also come and render their verdict and upon their oath do say "We the Jury find the defendants William R. Johnson alias W. R. Johnson alias Bill Johnson, Jack Sommers alias J. Sommers, James A. Hartigan alias J. A. Hartigan alias Jimmie Hartigan alias J. A. Hart, John M. Flanagan alias J. Flanagan and William P. Kelly alias Bill Kelly guilty as charged in the 1st 2nd 3rd 4th and 5th counts in the indictment and "We find the defendant Stuart Solomon Brown alias S. S. Brown guilty as charged in the 3rd 4th and 5th counts and not guilty as charged in the first and second counts of the in-

dictment" and "We the Jury find the defendants Andrew J. Creighton alias A. J. Creighton alias Red Creighton, 264 Edward Wait alias Ed Wait and Reginald E. Mackay alias Reg Mackay not guilty as charged in the 1st 2nd 3rd 4th and 5th counts of the indictment" and thereupon on motion of the defendants' attorneys that the jury be polled the Clerk inquired of each and every juror, "was this and is this your true verdict" to which inquiry each and every juror replied in the affirmative whereupon the defendants William R. Johnson alias W. R. Johnson alias Bill Johnson, Jack Sommers alias J. Sommers, James A. Hartigan alias J. A. Hartigan alias Jimmie Hartigan alias J. A. Hart, John M. Flanagan alias J. Flanagan and William P. Kelly alias Bill Kelly by their attorneys enter here- in their motion for a new trial in said cause which motion is entered and continued to October 17, A. D. 1940 it is Ordered by the Court that the defendants Andrew J. Creighton alias A. J. Creighton alias Red Creighton, Ed- ward Wait alias Ed Wait and Reginald E. Mackay alias Reg Mackay be and the same are hereby discharged.

265 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—32168) • •

Entered
Oct. 12,
1940.

Saturday, October 12, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day comes the defendant Stuart Solomon Brown alias S. S. Brown by his attorney and enters herein his motion for a new trial in said cause which motion is entered and continued to October 17, A. D. 1940.

266 And afterwards, to wit, on the 23rd day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entries, to wit:

Entered
Oct. 23,
1940.

267 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

United States of America

vs.

William R. Johnson, alias W. R. } No. 32168.
Johnson, alias "Bill" Johnson. }

This day comes the United States by the United States Attorney and comes also the defendant William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied to which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant William R. Johnson, alias W. R. Johnson, alias "Bill" Johnson be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Five (5) Years on each of the first, second, third and fourth counts of the indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years on the fifth count of the indictment and

besides forfeit and pay to the United States of America a fine in the sum of Ten Thousand and no/100

dollars (\$10,000.00) on each of the first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of fine in the amount of Ten Thousand Dollars (\$10,000.00) shall discharge all fines. To which ruling and judgment of Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby ordered until the 30th day of October, 1940, 10:00 o'clock A. M., and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,

Judge, United States District Court.

October 23, 1940.

269 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

United States of America

vs.

Jack Sommers, alias J. Sommers

} No. 32168.

This day comes the United States by the United States Attorney and comes also the defendant Jack Sommers, alias J. Sommers, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has

Entered
Oct. 23,
1940.

anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant Jack Sommers alias J. Sommers be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Four (4) Years on each of the first, second, third and fourth counts of the indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years on the fifth count of the indictment and besides forfeit and pay to the United States of America a fine in the sum of

Eight Thousand and no/100 (\$8,000.00) on each of the 270 first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of one fine in the amount of Eight Thousand Dollars (\$8,000.00) shall discharge all fines. To which ruling and judgment of the Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M. and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,

Judge, United States District Court.

October 23, 1940.

271 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

United States of America

vs.

James A. Hartigan, alias J. A.

Hartigan, alias Jimmie Harti-
gan, alias J. A. Hart

} No. 32168.

This day comes the United States by the United States Attorney and comes also the defendant James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant James A. Hartigan, alias J. A. Hartigan, alias Jimmie Hartigan, alias J. A. Hart be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Three (3) Years on each of the first, second, third, and fourth counts of the
272 indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years on the fifth Count of the indictment and besides forfeit and

Entered
Oct. 23
1940.

pay to the United States of America a fine in the sum of Six Thousand and no/100 Dollars (\$6,000.00) on each of the first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of one fine in the amount of Six Thousand Dollars (\$6,000.00) shall discharge all fines. To which ruling and judgment of the Court the defendant duly excepts and on motion of the defendant is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M. and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,

Judge, United States District Court.

October 23, 1940.

Entered
Oct 23,
1940.

273 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

United States of America	} No. 32168.
vs.	
John M. Flanagan, alias J. Flanagan	

This day comes the United States by the United States Attorney and comes also the defendant John M. Flanagan alias J. Flanagan, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant John M. Flanagan, alias J. Flanagan be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Four (4) Years on each of the first, second, third and fourth counts of the indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years

on the fifth count of the indictment and besides forfeit 274 and pay to the United States of America a fine in the sum of Eight Thousand and no/100 Dollars (\$8,000.00) on each of the first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of one fine in the amount of Eight Thousand Dollars (\$8,000.00) shall discharge all fines. To which ruling and judgment of the Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M. and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,

Judge, United States District Court.

October 23, 1940.

Entered
Oct. 23,
1940.

275 IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,
Eastern Division.

United States of America
vs.
William P. Kelly, alias Bill Kelly } No. 32168.

This day comes the United States by the United States Attorney and comes also the defendant William P. Kelly, alias Bill Kelly, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each count of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts

Whereupon the United States by the United States Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant William P. Kelly, alias Bill Kelly be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Four (4) Years on each of the first, second, third, and fourth counts of the indictment and to be confined in a United States Penitentiary for and during a period of Two (2) Years on 276 the fifth count of the indictment and besides forfeit and pay to the United States of America a fine in the sum of Eight Thousand and no/100 Dollars (\$8,000.00) on

each of the first, second, third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the second, third, fourth and fifth counts shall run concurrently with the term of imprisonment on the first count and that the payment of one fine in the amount of Eight Thousand Dollars (\$8,000.00) shall discharge all fines. To which ruling and judgment of the Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M. and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,

Judge, United States District Court.

October 23, 1940.

277 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Entered
Oct. 23,
1940.

United States of America,	} No. 32168.
vs.	
Stuart Solomon Brown, alias S. S.	
Brown.	

This day comes the United States by the United States Attorney and comes also the defendant Stuart Solomon Brown, alias S. S. Brown, in his own proper person and by his counsel and thereupon this cause coming on to be heard upon the said defendant's motion heretofore entered herein for a new trial, after arguments of counsel and due deliberation of the Court said motion is overruled and a new trial denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the said defendant by his counsel enters herein his motion in arrest of judgment as to each of the third, fourth and fifth counts of the indictment which motion is also overruled and denied. To which ruling the defendant by his counsel duly excepts.

Whereupon the United States by the United States

Attorney enters herein its motion for judgment on the verdict and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reason why sentence should not now be pronounced it is therefore considered and

Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty heretofore rendered by the Jury herein that the defendant Stuart Solomon Brown, alias S. S. Brown be committed to the custody of the Attorney General to be confined and imprisoned in a United States Penitentiary for and during a period of Two (2) Years on each of the third, fourth and fifth counts of the indictment and besides forfeit and pay to the United

States of America a fine in the sum of Four Thousand 278 and no/100 Dollars (\$4,000.00) on each of the third, fourth and fifth counts of the indictment and it is further

Ordered that the terms of imprisonment on the fourth and fifth counts shall run concurrently with the term of imprisonment on the third count and that the payment of one fine in the amount of Four Thousand Dollars (\$4,000.00) shall discharge all fines. To which ruling and judgment of the Court the defendant duly excepts and on motion of the defendant it is further

Ordered that the execution of sentence herein be and it is hereby stayed until the 30th day of October, 1940, 10:00 o'clock A. M., and that the bond heretofore filed herein by said defendant remain in full force and effect.

Barnes,

Judge, United States District Court.

October 23, 1940.

279 And afterwards, to wit, on the 24th day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entries, to wit:

Entered
Oct. 24,
1940.

280 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Thursday, October 24, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

United States of America, }
vs. } No. 32168.
William R. Johnson, et al., }

This day comes the defendant William R. Johnson by his attorney and enters his motion to fix bail for the enlargement of the defendant pending appeal which motion is overruled and denied.

281 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

Thursday, October 24, A. D. 1940.

Present: Honorable John P. Barnes, Judge.

This day come the defendants, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown by their attorneys and enter their motions to fix bail for the enlargement of the defendants pending appeal which motion is overruled and denied.

<sup>Filed
Oct. 24,
1940.</sup> 282 And on, to wit, the 24th day of October, A. D. 1940,
came the defendants by their attorneys and filed in
the Clerk's office of said Court Notice of Appeal in words
and figures following, to wit:

283 IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

United States of America,	}	Indictment for Vio- lation of Sec. 145(b), Revenue Acts of 1936 and 1938, and Sec. 88, Title 18, U. S. Code. No. 32168.
<i>Plaintiff,</i>		
<i>vs.</i>		
William R. Johnson <i>et al.</i> ,		
<i>Defendants.</i>		

NOTICE OF APPEAL.

Name and address of appellant:

William R. Johnson, Lombard, Illinois.

Name and address of appellant's attorney:

Floyd E. Thompson, 11 South LaSalle Street, Chicago,
Illinois.

Offense:

Violation of Section 145(b) of the Revenue Acts of 1936
and 1938, U. S. C., Title 26 Section 145, for attempting
to evade and defeat income tax for the years 1936, 1937,
1938 and 1939, and violation of Section 88, Title 18, U. S.
C., for conspiracy to defraud the United States by com-
mitting offenses defined by the Revenue Act.

Date of judgment:

October 23, 1940.

Brief description of sentence:

This appellant was sentenced the maximum provided
by law,—five years' imprisonment in the penitentiary and
\$10,000 fine on each of the first four counts of the indict-

ment, and two years' imprisonment in the penitentiary and \$10,000 fine on the fifth count of the indictment, the sentence to imprisonment to run concurrently and the payment of one fine of \$10,000 to satisfy all fines.

Name of prison where now confined, if not on bail:

Appellant is not now confined in prison but is at large on bail under a stay of execution entered upon the overruling of the motion for new trial October 23, 1940, which expires October 30, 1940.

I, William R. Johnson, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment entered October 23, 1940, in the District Court of the

United States for the Northern District of Illinois, Eastern Division, on the grounds set forth below and other grounds to be set forth in a more detailed assignment of errors.

William R. Johnson,
Defendant-Appellant.

Dated October 24, 1940.

285 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

GROUND OF APPEAL.

Appellant, William R. Johnson, hereby reserving the privilege of filing a detailed assignment of errors, as provided by Rule 9, Title IV, of the Circuit Court of Appeals for the Seventh Circuit of the United States, and of including in said assignment of errors all the following grounds as well as others that may appropriately appear, states the following grounds for appeal:

1. The Court erred in not sustaining this appellant's motion for a directed verdict on each count of the indictment at the conclusion of the evidence for the prosecution.
2. The Court erred in not sustaining this appellant's motion for a directed verdict on each count of the indictment at the conclusion of all the evidence.
3. There is no substantial competent evidence in the record that this appellant wilfully attempted to evade pay-

ment of income taxes for the year 1936, as charged in the first count of the indictment.

286 4. There is no substantial competent evidence in the record that this appellant wilfully attempted to evade payment of income taxes for the year 1937, as charged in the second count of the indictment.

5. There is no substantial competent evidence in the record that this appellant wilfully attempted to evade payment of income taxes for the year 1938, as charged in the third count of the indictment.

6. There is no substantial competent evidence in the record that this appellant wilfully attempted to evade payment of income taxes for the year 1939, as charged in the fourth count of the indictment.

7. The Court erred in receiving in evidence declarations of co-defendants outside the presence of defendant Johnson against the defendant Johnson as to the first four counts of the indictment, and the prejudicial effect of such improper evidence could not be and was not prevented by the instruction of the Court that such evidence was not to be considered by the jury under the first four counts.

8. The Court erred in receiving in evidence, against the defendant Johnson as to the first four counts of the indictment, the income tax returns of the alleged aiders and abettors, and the declarations and acts and omissions of such alleged aiders and abettors in connection with the preparation and filing of their several income tax returns.

9. The Court erred in receiving in evidence against defendant Johnson under the first four counts of the indictment the acts and declarations of co-defendants outside the presence of defendant Johnson, in connection with the exchange of currency and the cashing of checks by the several co-defendants, in the absence of any
287 evidence competent under the first four counts showing that defendant Johnson had any interest in said currency or said checks or that he received any of said currency or proceeds of said checks.

10. There is no substantial competent evidence in the records that this appellant conspired and confederated with the named co-defendants or any other persons to commit offenses against the United States, as charged in the fifth count of the indictment.

11. The Court erred in receiving in evidence declarations of co-defendants and other alleged conspirators made

out of the presence of defendant Johnson, in the absence of proof by independent evidence of the existence of a conspiracy in which the defendant Johnson was a participant at the time said declarations were made.

12. The Court erred in receiving in evidence declarations of alleged co-conspirators which were not acts in furtherance of the alleged common object.

13. The Court erred in receiving in evidence statements of alleged co-conspirators which were mere narration of past events and not acts in furtherance of the alleged common object.

14. The Court erred in receiving in evidence against defendant Johnson documents relating to transactions of particular co-defendants containing prejudicial entries and notations regarding defendant Johnson which were no part of books of account or of records of transactions with such other defendants.

15. The Court erred in receiving in evidence details of operations of gambling houses and of losses of patrons of such gambling houses, and other similar immaterial matter which was prejudicial to this appellant and confusing to the jury.

288 16. The Court erred in receiving evidence under the fifth count of the indictment, against defendant Johnson, declarations and acts of other co-defendants in connection with the exchange of currency and the cashing of checks, without proof of any connection of Johnson with said transactions or of any interest of Johnson in such currency or proceeds of checks.

17. The Court erred in receiving in evidence proof of other criminal acts not connected with the charges made in the indictment and immaterial to any issue made by the indictment or any count thereof.

18. The Court erred in failing to instruct the jury that neither the mere cashing of checks nor the mere changing of currency by some of the co-defendants is evidence of income of defendant Johnson without proof that defendant Johnson was the owner of or had an interest in said checks or currency.

19. The Court erred in failing to instruct the jury that the existence of a conspiracy cannot be established against an alleged conspirator by evidence of acts or declarations of an alleged co-conspirator done or made in his absence.

20. The Court erred in failing to instruct the jury that

the evidence that defendant Brown referred to the Reserve for Uncollected Funds account on the books of the Lawrence Avenue Currency Exchange in conversation with witness Bagshaw as "the Johnson account" was hearsay as to defendant Johnson and could not be considered by the jury as proof that defendant Johnson had any interest in or connection with such account.

21. The Court erred in refusing to instruct the jury that the income tax returns of the several co-defendants and the testimony with respect to the contents thereof and of acts and declarations in connection with the 289 making and filing thereof were not competent evidence against defendant Johnson and could not be considered by the jury in considering its verdict as to defendant Johnson.

22. The Court erred in failing to instruct the jury that the evidence that defendant Brown stated to witness Clifford that he had destroyed the records of the Lawrence Avenue Currency Exchange was hearsay as to defendant Johnson and not to be considered by the jury in considering the charges against him.

23. The Court erred in failing to instruct the jury that the appearance on customers' account records of the Illinois Nationwide News Service of the name "Johnson" or "Bill Johnson" was hearsay as to defendant Johnson and not to be considered by the jury in considering the charges against him.

24. The Court erred in sending to the jury room a great mass of documents received in evidence which contained entries and statements having no bearing on any issue in this case and which were not connected with the defendant Johnson by any competent evidence.

25. The Court erred in overruling the motion to quash the indictment.

26. The Court erred in overruling the demurrer to the indictment.

27. The Court erred in denying the application for a more specific bill of particulars.

28. The Court erred in denying the motion to grant a mistrial.

William R. Johnson,
One of Defendants.
(Signed) Floyd E. Thompson,
Attorney.

290 IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois,
Eastern Division.

Filed
Oct.
1940.

United States of America, }
vs. } No. 32168.
William R. Johnson, et al. }

NOTICE OF APPEAL.

1. Names and Addresses of Appellants:

Jack Sommers, 6144 North Rockwell Street, Chicago,
Illinois;
James A. Hartigan, Berwyn, Illinois;
John M. Flanagan, 7451 Euclid Parkway, Chicago,
Illinois;
William P. Kelly, Oak Park, Illinois;
Stuart Solomon Brown, 4132 North Kenmore Avenue,
Chicago, Illinois;

2. Names and Addresses of Appellants' Attorneys:

Edward J. Hess, 111 West Monroe Street, Chicago,
Illinois;
George F. Callaghan, 105 West Adams Street, Chicago,
Illinois;

3. Offense:

Aiding and abetting violation of Section 145(b), Title
26 of the United States Code, and violation of Section 88,
Title 18, United States Code; the wilful attempt to de-
feat and evade income taxes for the years 1936, 1937,
291 1938 and 1939, and a conspiracy so to do. (These
Appellants charged in the first four counts with aiding
and abetting, and in the fifth count as conspirators.)

4. Date of Judgment:

October 23, 1940.

5. Brief Description of Judgment and Sentence:

Appellant Sommers: Four (4) years and a fine of
\$8,000.00 on each of Counts 1 to 4, and two (2) years on
Count 5 and a fine of \$8,000.00, sentences to run con-
currently and payment of one fine to satisfy all.

Appellant Flanagan: Four (4) years and a fine of \$8,000.00 on each of Counts 1 to 4, and two (2) years on Count 5 and a fine of \$8,000.00, sentences to run concurrently and payment of one fine to satisfy all.

Appellant Kelly: Four (4) years and a fine of \$8,000.00 on each of Counts 1 to 4, and two (2) years on Count 5 and a fine of \$8,000.00, sentences to run concurrently and payment of one fine to satisfy all.

Appellant Hartigan: Three (3) years and a fine of \$6,000.00 on each of Counts 1 to 4, and two (2) years on Count 5 and a fine of \$6,000.00, sentences to run concurrently and payment of one fine to satisfy all.

Appellant Brown: Two (2) years and a fine of \$4,000.00 on each of Counts 3 to 5, sentences to run concurrently and the payment of one fine to satisfy all.

6. Name of Prison where Confined:

Appellants at liberty under a stay of execution granted by the District Court, which expires October 30, 1940.

We, the above-named Appellants, hereby respectively appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, from the respective judgments above mentioned on the grounds hereinafter set forth.

Dated: October 23, A. D. 1940.

(Signed) Jack Sommers,

(Signed) James A. Hartigan,

(Signed) John M. Flanagan,

(Signed) William P. Kelly,

(Signed) Stuart Solomon Brown,

Appellants.

292 GROUNDS OF APPEAL FOR AND ON BEHALF
OF JACK SOMMERS, JAMES A. HARTIGAN,
JOHN M. FLANAGAN, WILLIAM P. KELLY,
AND STUART SOLOMON BROWN.

1. There is no evidence to support the verdict as to any count in the indictment.

2. The verdict is contrary to the law and evidence.

3. The verdict is the result of bias, passion and prejudice.

4. The Court erred in denying the respective motions of the defendants for a directed verdict at the close of the evidence for the Government, and which motion was renewed at the close of all of the evidence.

5. The Court erred in denying the motion of the defendants to arrest the judgment.

6. The Court erred in the admission of evidence and erred in overruling objections to evidence.

7. The Court erred in admitting evidence of various conversations and declarations of the various defendants not made in pursuance of the conspiracy charged in the indictment.

8. The Court erred in admitting evidence of acts and declarations of other defendants and persons against these defendants done and made after these defendants had severed all connections with the alleged conspiracy.

9. The Court erred in admitting evidence of statements of acts of various persons and defendants made out of the presence of these defendants, which acts and declarations were hearsay.

293 10. The Court erred in refusing to require the Government to elect upon which count or counts of the indictment it would proceed, which motion was made at the close of the evidence for the Government and renewed at the close of all the evidence.

11. The Court erred in overruling the respective motions to quash the indictment and pleas in abatement filed by these defendants.

12. The Court erred in overruling the special plea of the statute of limitations.

13. The Court erred in denying the motions of the defendants for a more specific bill of particulars.

14. The Court erred in admitting in evidence acts and declarations of these defendants antedating the period set forth in the indictment.

15. The Court erred in admitting evidence against these defendants of matters and things not set forth or contained in the bill of particulars.

16. The Court erred in admitting in evidence against these defendants under the first four counts of the indictment various acts and declarations which were admissible, if at all, only under the fifth count of the indictment.

17. The Court erred in admitting in evidence the testimony of the defendant Brown given before the Grand Jury in January, 1940.

18. There is no evidence that any of these defendants aided and abetted the defendant Johnson in any attempt

to defeat and evade income taxes, or that any of them
294 conspired to defraud the United States.

19. The Court erred in admitting in evidence against these defendants numerous expenditures of the defendant Johnson and other persons with which these defendants have no connection or knowledge.

20. The Court erred in denying the motion of the defendants for a mistrial because of the misconduct of the prosecutor.

21. The Court erred in admitting in evidence against these defendants various books, documents and records of the Bon Air Country Club, Sunny Acres Farm, Nationwide News Service, and numerous ledger sheets and books of account of various persons, firms and corporations with which these defendants were in no wise connected and of which they had no knowledge.

22. The Court erred in admitting in evidence the income tax returns filed by all of the various defendants prior to the period covered by the indictment and by the bill of particulars.

23. The Court erred in limiting unduly the cross-examination of the witness Goldstein.

24. The Court erred in failing to instruct the jury that neither the mere cashing of checks nor the mere changing of currency by some of the co-defendants is evidence of income of defendant Johnson without proof that defendant Johnson was the owner of or had an interest in said checks or currency.

25. The Court erred in failing to instruct the jury that the existence of a conspiracy cannot be established against an alleged conspirator by evidence of acts or declarations of an alleged co-conspirator done or made in his absence.

295 26. The Court erred in failing to instruct the jury that the evidence that defendant Brown referred to the Reserve for Uncollected Funds account on the books of the Lawrence Avenue Currency Exchange in conversation with witness Bagshaw as "the Johnson account" was hearsay as to these defendants and could not be considered by the jury as proof that these defendants had any interest in or connection with such account.

27. The Court erred in sending to the jury room a great mass of documents received in evidence which contained entries and statements having no bearing on any

issue in this case and which were not connected with these defendants by any competent evidence.

(Appellants hereby reserve the privilege to file detailed assignment of errors, as provided in Rule IX of the Circuit Court of Appeals, for the Seventh Circuit, and to include in said assignment of errors, all or any part of the above grounds, as well as others which may appropriately appear.)

296 And afterwards, to wit, on the 24th day of October, A. D. 1940, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered
Oct. 24,
1940.

297 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—32168) • •

ORDER.

Notice of appeal having heretofore been filed by William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown and the Clerk of this Court having notified the trial judge of the filing of said notice of appeal, and the trial judge having directed the attorneys for the appellants and the United States Attorney to appear before him on Thursday, October 24 1940 at the hour of Two o'clock P. M., in Room 653 United States Court House, Chicago, Illinois, and it having been represented to the judge, upon behalf of the appellants, that the appeal is to be prosecuted not only upon the clerk's record of proceedings but also upon a bill of exceptions.

It Is Ordered: (1) That the appellants, within thirty (30) days after the taking of the appeal (filing with the clerk of this court of notice of appeal), procure to be settled and filed with the Clerk of this Court a bill of exceptions, setting forth the proceedings upon which the appellants, wish to rely in addition to those shown by the clerk's record of proceedings; (2) that the appellants, within the same time, file with the clerk of this court an assignment of errors of which appellants complain.

John P. Barnes,
Judge.

Dated: October 24, 1940.

Filed
Oct. 31,
1940.

298 And on, to wit, the 31st day of October, A. D. 1940, came the defendants by their attorneys and filed in the Clerk's office of said Court Praeipice for Record in words and figures following, to wit:

299 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—32168) * *

PRAEIPICE FOR RECORD.

To the Clerk of the District Court:

You Are Hereby Requested to prepare a transcript of the record in the above-entitled cause for the joint and several use of the defendants whose names are hereinabove set forth, in the United States Circuit Court of Appeals, for the Seventh Circuit, pursuant to notices of appeal heretofore filed on behalf of said defendants, and to include in such transcript of record the following documents filed and orders entered in said cause:

1. Indictment;
2. Pleas of not guilty of defendants;
3. Order permitting withdrawal of pleas and allowing filing of motions (5/16/40);
4. Motion of defendant, William R. Johnson, to quash indictment;
5. Order overruling said motion;
6. Plea in abatement in the nature of a motion to quash indictment filed by defendants, Andrew J. Creighton,
300 Jack Sommers, Edward Wait, James A. Hartigan,
John M. Flanagan, Orrie Alexander, William P.
Kelly, Reginald E. Mackay, Stuart Solomon Brown
and Bernice Downey;
7. Motion to require answer to special pleas and motions to quash, and order thereon;
8. Motion to strike pleas in abatement of defendants, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey, and order sustaining same;
9. Demurrer of defendant, William R. Johnson;
10. Order overruling aforesaid demurrer;
11. Joint and several demurrer of Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M.

Flanagan, Orrie Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey;

12. Order overruling aforesaid joint and several demurrer;

13. Special plea in bar as to Count 1 of the indictment,—statute of limitations;

14. Demurrer of the Government to aforesaid plea in bar;

15. Order sustaining demurrer to said plea in bar;

16. Re-entry of pleas of not guilty by defendants;

17. Motions for bill of particulars;

18. Order directing filing of bill of particulars (6/17/40);

19. Bill of particulars;

20. Exceptions to bill of particulars by all defendants, except William R. Johnson;

21. Order overruling aforesaid exceptions (7/24/40);

22. Motion of defendant, William R. Johnson, for more specific bill of particulars;

301 23. Order denying aforesaid motion (7/24/40);

24. Supplemental bill of particulars and order allowing filing thereof (8/13/40);

25. Motion of the United States Attorney to nolle pros indictment as to defendants, William R. Skidmore, William Goldstein, Orrie Alexander and Bernice Downey;

26. Order allowing dismissal as to aforesaid four (4) defendants;

27. Order allowing substitution of counsel;

28. Motion of defendants, William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown, for a directed verdict of not guilty made at the conclusion of the Government's evidence;

29. Order denying the aforesaid motion;

30. Motion of defendants to require the Government to elect as to certain counts, made at conclusion of Government's evidence, and order thereon;

31. Motion by defendants, William R. Johnson, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown, for a directed verdict of not guilty made at the conclusion of all evidence;

32. Order denying the aforesaid motion;

33. Motion of defendants to require Government to

elect as to certain counts, made at conclusion of all evidence, and order thereon;

34. Motion of defendants to withdraw juror and declare a mistrial, and order denying said motion;

35. Verdict;

36. Motion for a new trial made on behalf of defendants, William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown;

302 37. Order overruling motion for a new trial of aforesaid defendants;

38. Motion in arrest of judgment made on behalf of William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown;

39. Order overruling the aforesaid motion in arrest of judgment;

40. Judgment and sentences;

41. Bill of exceptions;

42. Assignment of errors on behalf of defendants, William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown;

43. Notices of appeal and grounds therefor as to defendants, William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown, and proof of service thereof;

44. Order of District Court denying bail pending appeal;

45. Order fixing time within which to settle bill of exceptions;

46. Praecepta for record and proof of service thereon; Said record to be prepared according to law and the Rules of the District Court and of the United States Circuit Court of Appeals, for the Seventh Circuit.

Dated: October 31, A. D. 1940.

Floyd E. Thompson,

Attorney for Defendant, William R. Johnson.

Edward J. Hess,

George F. Callaghan,

*Attorneys for Defendants, Jack Sommers,
James A. Hartigan, John M. Flanagan, Wil-
liam P. Kelly and Stuart Solomon Brown.*

Received a copy of the above and foregoing Praeceptum for Record, this 31st day of October, A. D. 1940.

J. A. Wall,
U. S. Attorney,
per R. M. Remblett.

303 Endorsed: In the District Court of the United States, Northern District. * * (Caption—32168)
* * Praeceptum for Record. Filed Oct. 31, 1940. Hoyt King, Clerk.

304 Northern District of Illinois, { ss:
Eastern Division.

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and partial transcript of the proceedings had of record made in accordance with Praeceptum filed in this Court in the cause entitled *United States of America v. William R. Johnson, et al.*, D. C. No. 32168, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 19th day of November, A. D. 1940.

(Seal)

Hoyt King,
Clerk.

**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the eleventh day of December 1940, in the following entitled appeals: No. 7500, *The United States of America, Plaintiff-appellee vs. William R. Johnson, defendant-appellant*; No. 7501, *The United States of America, plaintiff-appellee vs. Jack Sommers, et al., defendants-appellants*, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Third day of December A. D. 1941.

[SEAL]

KENNETH J. CARRICK,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the first day of October, in the year of our Lord one thousand nine hundred and forty, and of our Independence the one hundred and sixty-fifth.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS, ET AL., DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the
Northern District of Illinois, Eastern Division

And, to wit: On the twenty-fourth day of October 1940, there was filed in the office of the Clerk of this Court in cause No. 7500

a duplicate notice of appeal of William R. Johnson which said duplicate notice of appeal is not copied here as the same appears on pages 164 and 165 of the printed transcript record certified herewith under a separate certificate.

And, on the same day, to wit: On the twenty-fourth day of October 1940, there was filed in the office of the Clerk of this Court in cause No. 7501 a duplicate notice of appeal of Jack Sommers, et al., which said duplicate notice of appeal is not copied here as the same appears on pages 169 and 170 of the printed transcript of record certified herewith under a separate certificate.

And afterwards, to wit: On the fifteenth day of September 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh
Circuit

October Term, 1940—April Session, 1941

No. 7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

No. 7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS ET AL., DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the
Northern District of Illinois, Eastern Division

September 15, 1941

Before EVANS, SPARKS, and MAJOR, Circuit Judges.

MAJOR, Circuit Judge. These appeals are from a judgment, entered on the verdict of a jury, finding the defendants guilty of a wilful attempt to evade the payment of income taxes and of conspiracy to defraud the United States. The appellant in No. 7500 is William R. Johnson, and the appellants in No. 7501

(sometimes herein referred to as "codefendants") are Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly, and Stuart Solomon Brown. The indictment contains five counts, the first four of which charge Johnson with evasion of income taxes for the years 1936, 1937, 1938, and 1939, and are predicated upon Section 145 (b), Title 26, U. S. C. A. As to the offenses alleged in these counts, the codefendants (appellants in No. 7501) are charged as aiders and abettors. The fifth count charges all defendants with a conspiracy to defraud the United States of income taxes. Section 88, Title 18, U. S. C. A.

In addition to the appellants in No. 7501, a number of others were charged as aiders and abettors. As to such others, the charge was nolle prossed as to William R. Skidmore, William Goldstein, Orrie Alexander, and Bernice Downey. A verdict of not guilty was returned as to Andrew J. Creighton, Edward Wait, and Reginald E. MacKay.

The trial commenced August 17, 1940, and the verdict of the jury was returned October 12, 1940. As might be expected in a trial of this duration, many complicated and difficult questions, both legal and factual, were presented. Many errors are here assigned which is contended require a reversal of the judgment. After a lengthy and careful consideration of the voluminous records and briefs, we have reached the conclusion that the contention must be sustained. It would be impractical to consider all the errors assigned or contentions made by the respective parties, and we shall, therefore, discuss only those which we regard as of controlling importance.

The contested issues revolve largely around: (1) The denial of certain preliminary motions, (2) that the verdict of the jury is not supported by substantial, competent evidence, (3) the admission of improper evidence, (4) the improper examination and cross-examination of witnesses, (5) the improper and prejudicial remarks of the prosecutors, and (6) the denial by the court to include in its charge to the jury certain requests made by the defendants.

At the threshold of our consideration, we are confronted with the troublesome question arising from the court's denial of certain preliminary motions, pleas, and demurrers invoked by the defendants. On May 16, 1940, there was filed on behalf of the defendant Johnson what was entitled a motion to quash the indictment, and on the same date there was filed on behalf of the other defendants what was entitled a plea in abatement in the nature of a motion to quash. Both the motion and the plea attacked for substantially the same reasons the legality of the Grand Jury which returned the indictment. The defendants also filed a motion for rule on the Government to reply to such plea

and motion, which was by the court denied. The Government filed a motion to strike the motion and plea as being insufficient in law, which motion was allowed.

The attack upon the Grand Jury was upon the ground that it was without jurisdiction for the reason that the indictment was returned at a term of court subsequent to that at which it had been originally empaneled, without compliance with the Statute in that respect.

The Grand Jury was empaneled for the December 1939 Term.¹ This term continued until the first Monday in February; the February Term until the first Monday in March, and the March Term until the first Monday in April. The indictment was returned March 29, 1940, during the March Term.

On January 24, 1940, during the December 1939 Term, the Grand Jury was authorized, by order entered on that date, to sit during the February 1940 Term to finish investigations begun but not finished at the December Term. No question is raised but that this was a valid order and that the Grand Jury was legally continued from the December to the February Term.

The motion by Johnson to quash (the same may be said of the plea in abatement on behalf of other defendants) alleged that the indictment, returned at the March Term in the year 1940, was without warrant or authority of law for the reason that an order entered February 28, 1940, purporting to authorize the continuance of the Grand Jury from the February to the March Term was void. This order, as alleged in the motion, is as follows:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, the said Second December 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished during the said February 1940 Term of Court; and the Court being fully advised in the premises.

"It is therefore ordered that the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations."

¹ The Terms for the District Court of the Eastern Division of the Northern District of Illinois are fixed by Statute (28 U. S. C. A. Sec. 152) to be held on the first Mondays in February, March, April, May, June, July, September, October, and November, and the third Monday in December.

This order, so it was alleged, was predicated upon a petition of the Grand Jury filed February 28, 1940, praying for a continuance order " * * * to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Term of this Court, and which said investigations cannot be finished during the said February 1940 Term of said Court."

The motion to quash as to the first, second, and third counts of the indictment alleged that on March 1, 1940, the same Grand Jury returned an indictment against the defendant Johnson, charging the same crimes, matters, and violations as are contained in the first, second, and third counts of the instant indictment, and that—

" * * * the matters contained in the first, second, and third counts of the present and instant indictment were finished and concluded at the February 1940 Term of the said Grand Jury; * * * "

As to counts four and five, it was alleged that "no investigation of said matters was begun at the December 1939 Term," and "the investigation of said matters was first begun at said March 1940 Term of Court." It is the contention of the defendants that the order of continuance was not in compliance with Section 421, Title 28, U. S. C. Supp. This provision, so far as now material, provides:

" * * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than eighteen months: * * * "

No question is raised by the Government but that compliance with this provision is essential in order to give a Grand Jury vitality subsequent to the term at which it is originally empaneled. Moreover, in view of the fact that all inferior courts of the United States are of limited jurisdiction and possess only such power and authority as are expressly conferred, no question could well be raised in this respect. As was said in *In re Mills*, Petitioner, 135 U. S. 263, 267:

" * * * A grand jury, by which presentments or indictments may be made for offences against the United States, is a creature of statute. It cannot be empanelled by a court of the United States by virtue simply of its organization as a judicial tribunal. * * * "

If a court is without authority to empanel a Grand Jury except as the same is expressly conferred by Statute, it would seem to

follow inevitably that a Grand Jury empaneled could only have its authority or power continued to a subsequent term by strict compliance with the statutory provision. The language of the provision plainly limits the authority of the court to continue a Grand Jury to sit "during the term succeeding the term at which the request is made," and with equal clarity limits the continuance "solely to finish investigations begun but not finished by such Grand Jury."

It is contended by the defendants that the order of February 28, 1940, authorized the December Grand Jury to finish investigations begun during the February 1940 Term when, under the statute, the court had the power only to authorize it to finish investigations begun at the December Term. The Government disputes that the order of the court can be thus construed, but does not argue the question. The language "to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this court" leaves no room for argument but that the March Grand Jury was authorized to continue investigations begun at its February Term, as well as those begun at the December Term. It is equally plain that by reason of the statutory limitation, the court was without power to confer upon the Grand Jury authority to continue investigations begun at its February Term. The Government does not dispute—in fact, it, in effect, concedes—the soundness of this proposition.

The Government, however, in undertaking to meet the situation, relies upon an allegation of the indictment which purports to allege continuance of the Grand Jury, in conformity with the statute. (This allegation was attacked by demurrer as shown hereinafter). It is contended that by reason of this allegation, the question as to whether the Grand Jury was illegally continued to the March Term for the purpose of continuing an investigation begun at the February Term is academic. Reliance upon this allegation, in our judgment, places the Government in a precarious, if not fatal, situation. We are unable to discern how an illegal order of continuance can be cured or even aided by an allegation in the indictment to the effect that the Grand Jury was legally continued. The Government had an opportunity to answer the allegations of the motion to quash, but instead, entered a motion to strike, which was allowed. By such motion a legal question was presented which must be determined from the averments of the motion to quash.

In our view there can be no escape from the attack made upon the court's order except by blindly holding that the phrase "to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940

Terms" is valid as to the former and void as to the latter. We have been favored with no authority and we are unable to find any which would permit such a construction.

The Government also contends that by reason of the order of January 24, continuing the December Grand Jury to the February Term for the purpose of continuing any investigations begun at the December Term, that the Grand Jury at the February Term had no authority to begin any new investigation. Undoubtedly this is true, but we are unable to perceive how this furnishes any support for the order of February 28.

We are not greatly impressed with the defendants' argument that the Grand Jury was precluded from continuing an investigation during the March Term merely because of the fact that it, on March 1 (February Term), returned an indictment against Johnson charging the same violations as were charged in the first, second, and third counts of the instant indictment. True, a Grand Jury has no authority to continue an investigation which has been finished at a preceding term. While the return of an indictment might be an indication that the investigation was finished, we do not think it is conclusive. We see no reason why a Grand Jury is precluded from continuing an investigation after the return of an indictment, and subsequently again indict for the same offense.

The motion to quash with reference to the fourth and fifth counts of the indictment makes the direct allegation that the investigation of the matters therein charged was first begun at the March Term and that no such investigation was begun at the December Term. The fourth count charges the defendant Johnson on to wit, March 15, 1940, with an attempt to defeat and evade his 1939 income tax (other defendants charged as aiders and abettors). One of the means alleged is the filing of an erroneous return on March 15, 1940. Other means are alleged, not material to the instant question. The fifth count charges all the defendants with a conspiracy from a period commencing about January 1, 1936, up to and including the return of the indictment. It appears that much of the discussion concerning these counts is interwoven with that in connection with the demurrer. It is the contention of the defendants that the offense charged in the fourth count was committed, if at all, on March 15, 1940. We think this is correct—in fact, the count so alleges. It is then argued that no investigation could have been begun prior to the date of the commission of the alleged offense and, therefore, not until the March Term. The Government takes issue with this contention and argues that the Grand Jury investigates facts, not offenses. It is pointed out that the Grand Jury was investigating Johnson's income for the years 1936 to 1938 inclu-

sive and could not avoid hearing facts which related to the same question for the calendar year 1939.

There is same plausibility in this argument in view of the fact that each of the first four counts charges the same offense except for different years. It has been held, however, and we think correctly so, that an attempt to evade income tax is a separate offense for each year. *United States v. Sullivan*, 98 F. (2d) 79, 80. In *United States v. Miro*, 60 F. (2d) 58, 61, the court said:

"* * * A tax could neither be evaded nor attempted to be evaded if it was not due; if, by the terms of the statute, there is no tax due in a particular case, there is no 'tax imposed by this act' to evade or defeat. * * *

It appears to us that the language of the Statute "solely to finish investigations begun" must have reference to a legal investigation of an offense which has been committed. A Grand Jury is not a conservator of the peace. So far as we know, it has no authority to investigate offenses which it anticipates may be committed in the future. The mere fact that the Grand Jury had discovered evidence of tax evasion for previous years would give it no authority to presume that the same offense would be consummated in a later year. The fact that it heard testimony relative to offenses committed in previous years which might at some later time become relevant to an offense committed in the future, does not, in our judgment, sustain the argument that it could have begun an investigation as to such future offense. We think it is different with reference to the conspiracy count which was a continuing offense, an investigation of which the Grand Jury might have commenced at its December Term.

Our discussion so far has been predicated upon our conclusion that the order of February 28, 1940, was void. If our conclusion in this respect be erroneous, it would not follow that the allowance of the motion to strike the motion to quash could be sustained. As pointed out, the motion as to the first, second, and third counts expressly averred, as a matter of fact, that the investigations of the offenses charged in those counts "were finished and concluded at the February 1940 Term of the Said Grand Jury," and as to counts four and five, the averment was made that the investigation as to offenses therein charged was not "begun at the December 1939 Term of court" and was "first begun at said March 1940 Term of court." Assuming that the court entered a valid order of continuance, which we have decided to the contrary, the Grand Jury, according to the averments of the motion to quash, failed to comply with such order. We think it is plain that a Grand Jury, legally continued, has no authority to continue an investigation except one begun at its

original term and not finished either at the original term or an intervening subsequent term. The Government answers the argument as to these averments, by informing us as to the common practice of Grand Juries "engaged in a broad field of inquiry." This may be the most available answer, but legally it is a fiasco.

In defense of the Grand Jury proceeding, the Government relies upon a decision of this Court, *Elwell v. United States*, 275 Fed. 775. While it does not expressly so contend, we assume it infers, by reason of what was said in that case, that the Grand Jury may be considered as *defacto*. While we are loath to repudiate a holding of our own court, we are of the view that there is no such thing as a *defacto* Grand Jury in a Federal Court. In the *Elwell* case, the court cites *People v. McCauley*, 256 Ill. 504, 509, which, it is true, recognizes such a Grand Jury. The latter court expressly points out, however, that a Circuit Court of Illinois has general and original criminal jurisdiction, with common-law power to call or continue a Grand Jury. Its authority is not dependent upon Statute. A United States District Court, on the contrary, is of limited jurisdiction with such powers only as are expressly conferred. A Grand Jury is "a creature of Statute." In *re Mills*, Petitioner, *supra*. Furthermore, the *Elwell* case was decided previously to the enactment of the amendment of Section 421 *supra*, which expressly limits the authority of the court to continue a Grand Jury. It affords no assistance in the instant case.

We are not unmindful of the rule invoked by the Government that pleas in abatement and those of a kindred nature must be strictly construed. Facts must be stated, not conclusions. Here, however, the allegations were direct and positive. It is difficult to see how they could have been more specific. The challenge went to the very heart of the authority of the Grand Jury to act. The Government's motion to strike should have been overruled and the Government required to answer. The defendants were entitled to an opportunity to offer evidence in support of the motion and plea. *Carter v. Texas*, 177 U. S. 422, 447.

Finally the Government relies upon Section 556, Title 18, U. S. C. A., which provides in substance that no indictment, trial, judgment or other proceeding shall " * * * be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant." This provision is not applicable—the question presented is one of substance and not of form. *Crain v. United States*, 162 U. S. 625, 644.

In view of the importance of the case, the time consumed in its preparation and trial, as well as the expense relative thereto, we are reluctant to pronounce the action of the court as reversible error in striking the motion to quash and the abatement plea.

We are forced to the conclusion, however, that there is no escape from such a pronouncement. As was said in *Crain v. United States*, *supra*, 625, 644:

"* * * Nor ought the courts, in their abhorrence of crime nor because of their anxiety to enforce the law against criminals, to countenance the careless manner in which the records of cases involving the life or liberty of an accused are often prepared. Before a court of last resort affirms a judgment of conviction of, at least, an infamous crime, it should appear, affirmatively, from the record that every step necessary to the validity of the sentence has been taken. * * *

Notwithstanding that our conclusion in this respect requires a reversal of the judgment, we think it is proper to express our views concerning some of the other issues presented. Demurrers were filed to the indictment by all defendants attacking its sufficiency on numerous grounds, one of which is the alleged insufficiency of the allegation with reference to the continuance of the Grand Jury. The indictment in this respect alleged:

"* * * having begun but not finished during said December Term of Court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this Court in and for said division and district during the February and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term of Court, pursuant to request of the United States Attorney and upon motion of the Grand Jury, * * *

The argument concerning this allegation naturally is interwoven to a considerable extent with that concerning the motion to quash. The most serious criticism is that it failed to allege that the investigation was not finished at the February Term. It does allege, however, that the investigations were begun but not finished during the December Term, and that the Grand Jury was continued to the February and March Terms for the purpose of finishing such investigations. It could not well have been continued to the March Term for the purpose of finishing an investigation which had been finished at the February Term. While the allegation is not as certain as good pleading requires, yet we think it may be reasonably construed to exclude the thought that the investigation was finished at the February Term.

It is also asserted that the allegation is only contained in the first count of the indictment and even if sufficient, it has no application to the other counts which failed to incorporate the allegation by reference or otherwise. We do not believe this position is tenable. As we read the indictment, the allegation is part of what may be termed the preamble and specifically refers to the

"matters charged in this indictment," which we think makes it applicable to all counts alike. It is argued that according to this allegation, only one order of court was entered continuing the December Grand Jury during the February and March Terms. True, the word "order" is used in the singular when it should have been in the plural, but we are not disposed to hold the allegation insufficient for that reason.

The fourth count of the indictment alleged the offense to have been committed on March 15, 1940. It is again argued that an investigation of this offense could not legally have been begun at the December Term, 1939. We have heretofore considered and sustained the validity of this argument. It follows that the demurrer, for this reason, should have been sustained as to the fourth count.

It is also urged that, assuming the sufficiency of the allegation with reference to continuance, the judgment must be reversed for the reason that no proof was offered in its support. While this question, of course, is not raised by demurrer, it is so closely related to our discussion concerning the continuance matter that it appears appropriate to consider it at this point. The Government makes no answer to the contention unless it be that the court takes judicial notice of its orders in support of jurisdictional allegations. How far the court may go in this respect we need not decide for the reason that such notice would have disclosed the Grand Jury was continued to the March Term, illegally as we have held, "to finish investigations begun but not finished . . . during the said December 1939 and the said February 1940 Term of this court." It is apparent that judicial notice of this order would not have supported the allegation. In fact, we have sustained the allegation because it is in substantial conformity with the statutory provision rather than the court's order. If the allegation was essential, as we think it was, it would seem equally essential to support it with proof. Failure to have proved venue, no doubt, would have been fatal to the judgment. We think failure to prove the allegation with reference to the authority of the Grand Jury to act is likewise fatal. This is especially true in the instant case where the Government relied upon it in order to escape facing the issue tendered by the motion to quash.

The position of the Government leads to the inevitable result that a Grand Jury may, with impunity, exceed the limitation which Congress has definitely and plainly placed upon its authority, to act at a succeeding term. Furthermore, its unauthorized acts are not subject to challenge and the Government can never be called upon to make proof that the Grand Jury has proceeded in compliance with law. When confronted with a motion to quash

or plea in abatement, it relies upon an allegation of the indictment. When the latter is placed in issue by the defendant's plea, it offers no proof in support of the allegation, and the only excuse for its failure to do so is that the court takes judicial notice. There may be room for contrariety of opinion as to the precise manner in which the authority of a Grand Jury should be challenged, but we doubt if any will contend that the Government can wholly evade the challenge as has been done in the instant case. Failure of proof with reference to the allegation under discussion is, in our opinion, fatal to the judgment.

We now return to a further discussion of the demurrer. It is contended that various allegations of the indictment are inconsistent and duplicitous. The first four counts are the same, or substantially so, except as to dates and amounts. We shall discuss the first, and what is said will be equally applicable to the second, third, and fourth. The count charges, in the language of the statute, that the offense was committed on to wit, the 15th day of March 1937. It alleges facts disclosing that Johnson was required on or before March 15, 1937, to file a return of his income for the calendar year 1936. There is set forth what purports to have been his actual income and tax which he should have paid, as well as his reported income and the tax paid. The latter is substantially less than the former. As a means of committing the offense, it is alleged that the return was made under oath March 12, 1937, and filed March 15, 1937. As a further means, it is alleged that Johnson "did conceal and cause to be concealed from any and all proper officers of the United States, his gross and net incomes aforesaid, and the sources of said gross and net incomes and the sources thereof; * * *"

The main contention of Johnson is that inasmuch as no date is alleged as to the time of concealment, a continuing offense is charged. There is some ground for this contention when viewed in connection with a subsequent allegation as to the codefendants (afterwards discussed). We are of the opinion, however, that this allegation can be reasonably construed as referring to March 15, 1937, the date of the offense as alleged. It is also argued by Johnson that the allegations with reference to the filing of the return and of concealment constitute a violation of Section 145 (a) and are, therefore, duplicitous. We do not believe there is any merit in this contention. We see no reason why the matters required or forbidden by that paragraph may not be utilized and alleged as a means of committing the offense defined by Section 145 (b).

As to the codefendants, the count presents a serious and, we think, fatal situation. Following the allegations as to Johnson, to which we have referred, it is alleged that—

"* * * during the calendar year 1936 and up to and including March 15, 1937, and continuously thereafter up to and including the date of the filing of the indictment * * * (all codefendants named) did * * * wilfully and knowingly aid, abet, conceal, induce, and procure the said defendant William R. Johnson, * * * to attempt in the manner aforesaid to evade and defeat the income tax aforesaid. * * *

Thus the codefendants are charged with a continuous offense from a period during 1936 up to March 27, 1940, the date of the return of the indictment. While the offense against Johnson and the means employed in connection therewith are charged as of March 15, 1937, the codefendants as aiders and abettors are charged with an offense which extended over a period of years. This allegation against the codefendants is so utterly inconsistent with those against Johnson that it, in our opinion, invalidates the indictment as to them. The conclusion seems inescapable that the charge against the aiders and abettors could be no broader than that against the principal. Furthermore, we are of the view that the statutory provision upon which the indictment is predicated does not define a continuing offense, nor does it define an offense which can be committed prior to the date on which the taxpayer is required to file his return. As was said in *United States v. Miro*, supra, page 61:

"* * * A tax could neither be evaded nor attempted to be evaded if it was not due. * * *

and as said by this court in *O'Brien v. United States*, 51 F. (2d) 193, 196:

"* * * There could, however, be no such prosecution for a willful attempt to evade or defeat a tax unless there was some tax due from the taxpayer. * * *

In addition, as pointed out by the codefendants, they are charged as accessories both before and after the fact. It is argued that such an allegation is bad for duplicity in view of Section 550, Title 18, U. S. C. A., by which an accessory before the fact is made a principal and punished as such, while under Section 551, an accessory after the fact can only be punished to the extent of one-half of the maximum imposed upon the principal. The question thus presented has not been decided, so far as we are aware. The Government endeavors to meet the contention by arguing that Section 551 entitled "Punishment of Accessories" is solely for the guidance of the court in pronouncing sentence. It relies upon certain cases,² none of which

² *Rathenberg v. United States*, 245 U. S. 480; *Mullaney v. United States*, 82 F. (2d) 638; *Madigan v. United States*, 23 F. (2d) 180; *Collins v. United States*, 20 F. (2d) 574.

is in point. These cases go no further than to hold that by Section 550 the distinction between principals, accessories, and accomplices has been abolished and that an accessory or accomplice may be charged and punished as principal. It does not follow, as contended here, that the distinction between an accessory before and after the fact has been abolished, nor does the language of Sections 550 and 551 justify such a construction. The Government's position leads to the result that a defendant may be charged and tried without knowledge as to whether a conviction will subject him to the punishment provided for a principal or the lesser punishment provided for an accessory after the fact. Without information as to whether the jury considered his connection with the offense as having been prior or subsequent thereto, the court, for the purpose of imposing punishment, must determine in which capacity the defendant acted. We are unable to agree with the Government's contention in this respect. We do not believe a defendant can properly be charged in the same count as an accessory, both before and after the fact.

The fifth count charges all defendants with a conspiracy extending from January 1, 1936, to the time of the filing of the indictment, to defraud the United States of income taxes due from Johnson for the years 1936 to 1939, inclusive. The allegations of counts one, two, three, and four, so far as they refer to Johnson, are included by reference. The conspiracy alleged was to the effect that Johnson was engaged in the gambling business and that in order to prepare the way for the making by him of false and fraudulent returns, the defendants would conceal from the Revenue Officers the investment, participation, and true ownership of Johnson in numerous gambling houses and enterprises in Cook County and Chicago, Illinois, by operating them under names other than his. Twenty-five of such houses were named. It was further a part of the conspiracy to establish and operate currency exchanges where the proceeds from the gambling houses could be converted into currency in such a manner as to conceal the source, ownership, and disposition thereof. It was also alleged that the defendants would file and cause to be filed false and fraudulent income tax returns by Johnson. As in the substantive counts there was set forth what purported to be the true income of Johnson for each of the years in question, and also the income as returned for each of those years. Numerous overt acts are alleged.

We need not discuss the numerous questions raised by the defendants as to this count. It charges a continuing offense which, in itself, is an answer to most of the criticism as to its validity. *Skelly v. United States*, 76 F. (2d) 483, 488.

We have already held that the fourth count was subject to demurrer as to all defendants. We now hold that the demurrer as to counts one, two, and three should have been sustained as to the co-defendants. As to the defendant Johnson, the demurrer was properly overruled as to counts one, two, three, and five, and as to the co-defendants properly overruled as to count five.

By motion for directed verdict at appropriate times, the question of the sufficiency of the evidence to sustain the verdict was preserved. It is here argued earnestly and at length that there was no substantial, competent evidence in support of the verdict. In view of the fact that the case must be reversed, we shall attempt to do little more than briefly refer to the theories advanced by the respective parties, and the general character of testimony in support thereof.

Johnson admittedly was a professional gambler and had been for many years. If he had any other business of consequence, the record does not disclose it. He was not just an ordinary gambler, but one of towering stature among that fraternity. The co-defendants were also admittedly in the same business. They operated brazenly and notoriously, and, so far as this record discloses, without interference or restraint during the period covered by the indictment. That the field was a fertile one is evidenced by the huge sums of money which apparently passed through their hands. It is of prime importance, however, to keep in mind that they were not charged with the violation of any law prohibiting gambling, or the operation of gambling houses. Neither were they charged with a failure to file income tax returns at the time required by law. Such returns were filed by Johnson, as well as by the co-defendants, and the Government received income tax for each of the years in question in substantial amounts. For the calendar year 1936, Johnson's return showed a net income of \$161,892, upon which he paid a tax of \$71,915; for the year 1937, a net income of \$248,660, upon which he paid a tax of \$128,399; for 1938, a net income of \$101,946, upon which he paid a tax of \$34,530, and for 1939, a net income of \$251,715, upon which he paid a tax of \$130,430. Substantially all the gross income disclosed by these returns was from his gambling operations.

An accountant for the Government computed Johnson's actual income for the year 1936, at \$547,942; for the year 1937, \$1,047,129; for 1938, \$935,353, and for 1939, \$961,504.

The Government sought to sustain the charge that Johnson failed to report all of his taxable income for the years 1936 to 1939, inclusive, on two distinct theories:

(a) By undertaking to prove that he owned a group of gambling houses operated in and about Chicago and that all the checks cashed, money deposited, and currency exchanged by persons operating these gambling houses were income from these gambling houses, and therefore that the aggregate of these banking transactions was taxable income which was in excess of the amount of net income which he reported; and

(b) By offering proof that he expended in said years more cash than he had available for spending, according to the income reported.

Each of the co-defendants except Brown was the operator of one or more gambling houses named in the indictment. Brown was the manager of the Lawrence Avenue Currency Exchange which handled funds and checks brought to it from various gambling houses. The total amount of money and checks handled by this and other exchanges and banks for the respective years, was, according to the Government's contention, the income of Johnson for such years.

This theory necessarily is predicated upon the premise that Johnson was the sole owner and proprietor and entitled to all the income from such houses. The soundness of the theory must be tested by the premise upon which it is constructed. This basic proposition the Government sought to establish by circumstantial evidence. The circumstances relied upon, in a general way, were proven by witnesses who were patrons, or who were minor employees of the various gambling houses, to the effect that Johnson frequently visited such houses, talked with persons who were in charge, exercised influence in the hiring of some of the employees, exercised certain control over the policies of operation, that the same group of workmen did construction and maintenance work at several of the gambling houses, that certain bus service was provided by the same company to serve the places, that the same accountants served Johnson and the other defendants in the preparation of their income tax returns, that large quantities of \$100 bills were taken by the operators of the several gambling houses in cashing checks and exchanging currency, and that Johnson used large quantities of bills of the same denomination in paying the purchase price and for improvements on properties owned by him or in which he was interested. Johnson denied that he owned any of said gambling houses, or that he had any interest in the banking transactions, and offered evidence to show that the gambling houses were owned respectively by certain of those named in the indictment as co-defendants.

We have carefully examined the testimony on this theory of the Government's case, and we are of the opinion that, consider-

ing it in the light most favorable to the Government, as we must do, the most that can be said is that the proof discloses Johnson had an interest in the gambling houses. The evidence does not show that he was the sole owner and therefore entitled to all the proceeds. The Government's contention on this theory of the case must rest upon the assumption that he owned the entire interest in the houses, that the total of all the business transactions at the currency exchanges and banks represented income from such houses, and that such income was paid to Johnson. It is not claimed that there is any proof that Johnson actually received this income. Such fact, if it be a fact, must be inferred from the other assumptions which we have mentioned. As already stated, Johnson reported a large income from his gambling transactions for each of the years in question, and to say that his interest in the gambling houses was such as to entitle him to an income greater than that reported is to indulge in rank speculation. If Johnson had reported no income for those years, a different situation would have been presented. We have no hesitancy in holding that the verdict can not be supported upon this theory.

On the expenditure theory, however, the case is more favorable to the Government. This theory was sought to be established by proving a statement purported to have been made by Johnson on January 1, 1932, that he had cash on hand in the amount of \$78,100. Thereafter, his income, as disclosed by his returns and his expenses, was shown year by year. The expenses, as shown by the Government from 1932 to 1939, were greatly in excess of his income for the same period. Admittedly, under this theory, the proof failed to establish the charge as to the year 1936. His income as reported for that year, plus what he had on hand at the beginning of the year, exceeded his expenditures by more than \$184,000. For the year 1937, however, his expenditures exceeded his income by \$106,000; for 1938, by \$367,000; and for 1939, by \$151,000. True, there is a dispute as to many of the items involved in these calculations and as to some of them, a serious dispute. We are of the opinion, however, that the proof of his income on this so-called expenditure theory was sufficient to present a jury question. As the proof on this theory, however, does not support the charge as to the year 1936 (count one), Johnson's motion for a directed verdict as to that count should have been allowed. As to the other counts, it was properly denied.

The motion for a directed verdict on behalf of the codefendants should have been allowed as to counts one, two, three and four. What we have said heretofore concerning the nature of

the offense charged is largely determinative. The charge against Johnson was not a continuing one and the offense, if committed, was by the filing of a false return on the 15th day of March of each year. There is no evidence and no contention that the co-defendants had anything to do with the preparation of these returns or that they had any knowledge or information as to their contents. Acts performed and statements made by them before the commission of the offense by Johnson are not sufficient to justify their conviction as aiders and abettors. We need not stop to inquire what distinction there is, if any, between aiders and abettors and a conspirator, for the reason that the case was presented on the theory that there was a distinction. It was so recognized in the indictment and throughout the trial. The evidence which the Government relies upon indiscriminately to establish the charge in the substantive counts, and the conspiracy count, however, was sufficient to require submission to the jury upon the latter charge. As to this count, therefore, the motion for a directed verdict was properly denied as to all defendants.

The defendants severely criticize a large amount of evidence admitted against them. After a study of the record in this respect, we are not convinced that any of it, with the exception later referred to, is such as to require a reversal. In a case of this character, much must be left to the discretion of the trial court. A large part of the evidence complained of was proper as to the conspiracy count, but improper as to the substantive counts. The fact that it is not relevant as to the latter does not require its exclusion as to the former. Typical of such evidence was the income tax returns filed by the co-defendants for the years covered by the indictment. They were properly admissible, we think, under the conspiracy count but should have been limited thereto. We are unable to see how they were material against any of the defendants as to the other counts. On the other hand it is difficult to see how their admission was harmful. In fact, it is our view that if they had any effect, they were beneficial to the defendants rather than harmful. These returns disclose a substantial income on the part of the co-defendants who, according to the Government's theory, were mere employees of Johnson in the operation of various gambling houses. The amount of income reported indicates that such co-defendants had an interest in such houses rather than that they were mere employees of Johnson as contended. It would therefore seem that they had no prejudicial effect.

Another line of testimony, properly subject to criticism in our opinion, was that given by scores of witnesses as to every conceivable detail concerning the operation of gambling houses.

Some of this was relevant to the contention that Johnson was the owner and operator of the houses. On the other hand much of it was wholly irrelevant to any issue in the case. A glaring example of such testimony was given by the witness Spankeren. He testified as having gambled at some of the houses mentioned in the indictment. After losing \$16,000, he quit gambling. A law suit was filed by his mother-in-law against a number of persons, including the defendant Johnson and co-defendants Sommers and Hartigan, apparently under a Statute authorizing recovery of losses sustained at gambling. The suit was settled with a lawyer representing Sommers for \$1,000, and the promise of a political appointment. It appears to be the Government's theory that this evidence proves ownership by Johnson. There is nothing to connect him with the incident, however, except the fact that he was named as a defendant in the suit. There is nothing to indicate that he had anything to do with settling the law suit or that he paid or promised anything for a settlement. This testimony did not prove, or tend to prove, ownership. The most that can be said is that it tended to show that the mother-in-law must have thought Johnson had an interest in the gambling house as he was made a defendant. By the same token, however, she must have thought that all the other defendants likewise had such an interest. Some of the testimony complained of pertained to gambling houses with which the defendants were not shown or claimed to have had the slightest connection. A great amount of time was consumed in proving that gambling houses operated upon a large scale. This was irrelevant to any issue in the case, especially in view of the fact that the Government did not rely upon losses sustained by individual patrons in determining Johnson's income. There was no issue in the case as to the occupation of Johnson or the co-defendants. By Johnson's tax returns, he had disclosed an enormous income from gambling operations, and the returns of the co-defendants disclosed substantial incomes. The offense charged was evasion of income tax—not gambling or operating gambling houses. A person reading the record, without knowledge of the charge, could reasonably conclude that the defendants were tried on the latter offense. There is room for argument that the admission of such testimony in wholesale quantities was prejudicial. To what extent this may be true, we need not decide. It must be remembered that the defendants were admitted gamblers engaged in the operation of gambling houses on a large scale. It would seem they are not in a very good position to complain of that part of the testimony which merely disclosed the magnitude of their operations.

We shall now refer to the testimony given by one Frank J. Clifford who testified for the Government, purportedly as an expert witness. It is contended by the defendants that his testimony invaded the province of the jury. On the other hand the Government contends that he testified in response to proper hypothetical questions. He qualified as an expert accountant and that he had been in the employ of the Government as a Revenue Agent for five years. So far as material to the question now under consideration, he first testified that the amount of currency delivered to the Lawrence Avenue Currency Exchange between the months of July 1938 and September 1939 was \$1,289 000. So far as is shown by the bill of exceptions contained in the record, he then, of his own volition, stated:

"I have made an analysis and computation based on Government's exhibits (naming over 400 exhibits) and other evidence in the record to determine the amount of net cash income reported by the defendant William R. Johnson for the years 1932 to 1939, inclusive."

He was asked to state the amount, and after doing so, volunteered the statement that he had made a computation of Johnson's expenditures for the years 1932 to 1939, inclusive. In response to a question he gave the result of such computation and again volunteered that he had made a computation as to the excess of expenditures over net cash income for the same period of time. In response to a question, he gave the result of such computation. He then volunteered the statement:

"With the exhibits just a moment ago enumerated, and the other evidence in the record, I have made a computation to determine the total amount of gross income of the defendant Johnson for the calendar year 1936."

The examination of this witness (omitting the numerous objections by defendant's counsel) proceeded as follows:

"Q. What is the amount, from your computation, of the gross income of the defendant Johnson for the calendar year 1936, according to your computation?"

"The COURT. You are making reference to those exhibits and the evidence in the record?"

"Mr. HURLEY. He used those as a basis for his computation."

"The COURT. Overruled."

"The WITNESS. \$547,942.38."

"I am able to state the amount of tax still due by the defendant Johnson to the United States for the calendar year 1936, after allowing credit for the amount of tax shown on defendant's tax return for the year as shown by Government's Exhibit R-10, in evidence."

"Q. And what is the total amount of tax still due the United States, according to your computation, for the year 1936?"

"The WITNESS. \$268,041.09."

Without a question the witness stated—

"I have made a computation based on the list of exhibits which you have read to me and the other evidence in the case to determine the total amount of Johnson's net income for the calendar year 1937.

"Q. What is that amount?"

"The WITNESS. \$1,047,129.77."

Again, without being questioned, he stated:

"I am able to state the amount of tax still due by Johnson for the calendar year 1937, after allowing credit for the amount of tax shown on Johnson's return for that year.

"Q. And what is the total amount of tax still due to the United States, according to your computation for the calendar year 1937?"

"The WITNESS: \$588,064.20."

The same character of question was propounded and the same character of response made as to Johnson's net income and tax due the Government for the years 1938 and 1939. It will be noted that the witness was not asked to assume anything. It is not necessary to refer to his cross-examination in determining the propriety of his examination in chief. It plainly discloses, however, that he decided in favor of the Government all the controverted issues upon which his answers were predicated.

Proper and specific objections were interposed by the defendants and overruled. The mere recitation of the questions propounded and answers given by this witness demonstrates their gross impropriety.³ He was permitted to examine hundreds of exhibits, consider "all the evidence in the case" and testify as to each of the years in question the amount of Johnson's net income and tax due thereon. In arriving at his factual conclusions, he necessarily was required to weigh the testimony on many conflicting points and to decide all controversies in favor of the Government. After this testimony the jurors were no longer required to think. The vital issues concerning which they had heard testimony for weeks had been determined and decided.

In support of its argument that Clifford's testimony was proper, the Government cites and relies upon a number of cases in which hypothetical questions have been approved.⁴ There is little dis-

³ United States v. Spaulding, 293 U. S. 498, 506; Dexter v. Hall, 85 U. S. 9, 26; Wilkes v. United States, 80 F. (2d) 285, 291; United States v. Stephens, 73 F. (2d) 695, 704.

⁴ Travelers Ins. Co. v. Drake, 89 F. (2d) 47, 50; Gleckman v. United States, 80 F. (2d) 394; Guzik v. United States, 54 F. (2d) 618, 620; City of Port Washington v. Thacher, 245 Fed. 94, 96.

pute among the authorities as to when and in what form a hypothetical question is proper. As was said by this court in the *Guzik* case, *supra*, page 620:

“* * * Certainly a hypothetical question may be deemed safe from ultimate attack where there is evidence tending to prove all the facts assumed and it includes all the material facts which the evidence tends to prove and which bear upon the subject with regard to which the expert is asked to express an opinion.”

The reason an answer to such a question does not invade the province of the jury is aptly stated in *Travelers Ins. Co. v. Drake*, *supra*, page 50:

“* * * The truth of facts assumed by the hypothetical question as within the probable range of the evidence, as a basis to support the hypothetical question, is a question of fact for the determination of the jury to find with the other submitted facts upon a fair submission of the issue, and it must determine whether the basis upon which the hypothetical question rests has been established. * * *”

None of the cases relied upon by the Government has any application to the instant situation for the reason that by no stretch of the imagination can the questions be treated as hypothetical. Not a single question by which the objectionable answers were elicited contains any assumption or hypothesis. In fact, some of his testimony was voluntarily given. It follows that the jury was not permitted to pass upon the validity or soundness of the premise upon which the answers were based. Thus the essential element of a hypothetical question, by which it is saved from invading the province of the jury, was eliminated. In oral argument before this court, counsel for the Government, in effect, conceded that after the testimony of this witness there was nothing left for the jury to decide except the truthfulness of his testimony.

The Government contends that the cases cited by the defendants are inapplicable for the reason that “none of them involves the type of case which we are concerned with, namely an income tax prosecution.” We are unaware, however, of any reason or authority by which a different rule should be applied because of the character of the case. That a proper hypothetical question could have been framed and propounded, we do not doubt. That such was not the case is so plainly and conclusively demonstrated as to admit of no dispute. We are of the view that the testimony of this witness, going to the very heart of the controverted issue and invading the province of the jury as it did, was so prejudicial and damaging that it alone would require a reversal of the judgment.

It would serve no good purpose to further extend this opinion by a discussion of the many other errors assigned. We have

endeavored to limit our discussion to the more important ones—those relating to substance which cannot be aided by verdict, and which affect the substantial rights of the defendants. In our study of the record and in preparing the opinion, we have endeavored to keep in mind a basic concept of American jurisprudence which, from time immemorial, has taught that every person charged with crime, regardless of his occupation or station in life, is entitled to a fair and impartial trial upon the issue or issues tendered by a legal indictment, returned by a Grand Jury empowered to act.

In view of what we have said, it necessarily follows that the judgment must be reversed. It is so ordered.

EVANS, Dissenting.

The assignments of error may be divided into two groups: (a) those that deal with the indictment; (b) and errors allegedly committed in the course of the trial.

Group (a) must likewise be divided into: (1) attacks on the grand jury and its authority to return the indictment here involved, and (2) assaults on the various counts of the indictment due to their alleged duplicity and inconsistency.

Convinced that the grand jury was within its authority in returning this indictment, I am compelled to dissent. This assignment raises a most important question. The holding of the majority opinion will greatly handicap the prosecution of offenders, who have concealed the facts establishing their crimes, so successfully, that a prolonged investigation into their activities is necessary. Moreover, I feel so certain that none of the counts of the indictment is demurrable because of inconsistency or duplicity, that dissent here, too, is necessary.

The assignments of error which challenge the sufficiency of the evidence to sustain the conviction of the first four counts set forth in the indictment have raised doubts which have made me pause, but here, too, I am persuaded that the evidence presented a jury question.

Other questions I shall discuss at such length as their importance, in my opinion, deserves.

(1) Defendants contend that the grand jury returned the indictments upon investigations begun during extensions of its term, rather than during its initial term. This, it is asserted, was contrary to the statute, 28 U. S. C. A. Sec. 421, which reads:

“* * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no

grand jury shall be permitted to sit in all during more than eighteen months: * * *

My reasons for rejecting defendants' urge in this regard are:

(a) It is not shown that the indictment was a result of subsequent investigations, i. e., investigations begun at the February or March Terms, rather than at the December Term.

(b) The indictment itself states that the investigations were in fact begun at the December Term.

(c) The crimes charged, all flowed from the same comprehensive and integral plan, so that in fact there could be but one investigation, although, because of statutory provisions, each year's attempt is made an "annual" crime as to each participant.

(d) The investigation as to the tax year 1939, which the proof pointed to, as necessarily showing a beginning of the investigation at the March 1940 Term (because the crime was not committed until March 15, 1940) may well have been anticipated and investigation of its probable future commission begun at the grand jury's initial term in December 1939. In fact, a study of this year may well have been deemed necessary to confirm the facts, and the proper deductions from such facts, developed in the investigation of previous years. It would have been negligent for them not to have continued their investigation of the criminal plan to the date of the hearing, when their investigation pointed strongly to the existence of a criminal plan in the years 1936, 1937, and 1938.

(e) In construing the statute, we must give a fair and rational construction to the word "investigation" otherwise a conclusion, unreasonable in its results, will be reached.

To better understand the situation, I restate briefly the facts which this contention concerns:

December 1939—The grand jury was impaneled.

January 24, 1940—The first order extending the term of the grand jury.

Feb. 28, 1940—The second order extending the term of the grand jury.

March 1, 1940—The indictment No. 32127 against Johnson for same transactions as in counts 1, 2, and 3, of instant indictment, was returned (February Term).

March 15, 1940—Commission of last substantive offense charged, i. e., in regard to 1939 tax.

March 29, 1940—The instant indictment returned, during March Term.

The first order of extension, made January 24, 1940, authorized the grand jury to sit during the February, 1940 term of court to finish investigations begun but not finished at the December, 1939

Term. We should presume they did what they were ordered to do.

The second order of extension of the term of the grand jury (which order is the basis of defendants' attack) was on the petition of the grand jury therefor:

"Now comes the * * * December Grand Jury * * * and * * * requests that an order be entered authorizing them * * * (the said Grand Jury) heretofore authorized to sit during the February 1940 Term * * * to continue to sit during the * * * March 1940 Term * * * to finish investigations begun but not finished * * * during the said December 1939 and the said February 1940 Terms * * *."

"It is Therefore Ordered That the * * * December Grand Jury * * * be * * * authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations."

The defendants argue that since the indictment was returned during the third term and covered: (a) crimes⁵ which had been the subject matter of an indictment returned during the second term, and as to which presumably investigations had been finished in said second term, a new investigation of such crimes, must therefore have been begun in the third term; (b) crimes⁶ not theretofore covered in the first indictment, and one of them in fact not committed until the third term—a fortiori, investigation as to these crimes could not have been begun in the first—December—Term and therefore any indictment charging such crimes is void because predicated on an investigation which the grand jury had no right to make, having been initiated during extensions of its original term.

This contention, though somewhat plausible, is quite fallacious.

(1) The indictment's preamble alleges

"The Grand Jurors * * * at the December Term * * * having begun but not finished during said December Term of Court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this court * * * for the purpose of finishing investigations begun but not finished during said December Term of Court * * *."

This was the same grand jury which presented the petition containing the words, allegedly ambiguous, upon which the order here assailed, is based. Should not their formal statement, made at the culmination of their deliberations be considered as proof positive of the facts they recite? Must not the formal statement of the grand jury as to their own acts, done in the secrecy of the grand jury room, be accepted? As against such positive statement, de-

⁵ Attempt to evade 1936, 1937, and 1938 taxes.

⁶ Attempt to evade 1939 taxes, and conspiracy count.

defendants without knowledge, make statements in the nature of conclusions, without explanatory basis or sources of information given—when it is apparent they make such statements merely on their own deductions from the fact that the fourth count of the indictment dealt with a fact which occurred after the December Term had expired.

The recital of this fact in the indictment can not be challenged by a demurrer, plea in abatement, or motion to quash, all of which challenge issues of law (Longsdorf, *Cyclopedia of Federal Procedure*, Secs. 2122, 2136, 2145).

(2) The first order of extension, made January 24, 1940, authorized the grand jury to sit during the February, 1940, term of court to finish investigations begun but not finished at the December 1939 term. Must we not presume the grand jury acted as it was legally directed to act, during the February term, i. e., finish investigations begun at December Term? If such be the fact, the second extension only gave them permission to continue investigations begun at the December Term, because they had had no authority to begin any other investigation during the February Term.

(3) The crimes, which the grand jury was investigating, were in reality the fruition of a single scheme, the results of which were multiple crimes arising not by virtue of the fact that distinct, separate, transactions and schemes were involved, but because the income tax statute makes possible a recurring crime for each annual period of its existence. As was said in the case of *U. S. v. Sullivan*, 98 F. 2d 79, CCA 2,

"Indeed the crimes charged in the indictment describe one course of conduct extending over several years, which results in separate offenses simply because the duty to file a return and pay the tax is one that recurs every twelve months."

The scheme (assuming here its existence) was of a single, comprehensive plan wherein A, B, C, D, and E, claimed ownership of the respective gambling houses in order to relieve F, the real owner, of a liability for larger surtaxes. The scheme was a single one. It was to run for an indefinite period. In the course of its life various crimes were committed, some against state laws, some against Federal laws. The grand jury was put on the trail at its December Term. Due to the successful covering of all tracks, time and effort were required by the grand jury to ascertain whether the defendants' action was merely to avoid state law prosecutions or whether said defendants had committed violations of Federal criminal laws and were seeking to conceal their violations.

The grand jury was unable to complete its investigation in one month. It sought, and secured, an extension of time. Still it was unable to complete its investigation. It again sought and secured an extension of time. Undoubtedly, information was obtained

during the first extension that had not been uncovered during the December Term. But it was the same criminal scheme, the investigation of which was begun in the December Term. The grand jury could validly continue to investigate the facts originally found at the December Term, supplemented by what it found during the first continuance, for it was the same illegal scheme which was being investigated.

Assume now, as defendants contend, that the grand jury began its investigation of later aspects of this same illegal scheme during the February or March terms. In fairness to them, must we not accept their statement that they were merely continuing investigations begun at December Term? There is nothing to indicate these defendants formally terminated their relationships and started new ones each year, thereby making anew, an annual conspiracy. No, the defendants A, B, C, D, and E, having long ago conceived the plan of deceptive ownership of the various houses, merely maintained the same relationship through the years involved. The most that can be said is that the evidence which the grand jury may have considered at its later sessions manifested the continued life of the identical, integral, continuing scheme to defeat the income tax law by numerous deceptive acts. They may have come to the grand jury's attention later, but they were a part of the same investigation begun at the December Term.

The majority opinion places much weight on the fact allegations in the motion to quash—on the ground that such facts are admitted by the Government's motion to strike—which facts stated that as to the first three counts the investigation was necessarily completed on the return of the first indictment in February Term and such investigations being finished, they could not be again renewed (begun) during an extension of the same grand jury term because such extensions are made solely to cover investigations begun but not finished during the initial term. The motion to quash also states as a fact that as to the fourth count (1939 taxes) no investigation was begun until the **March Term**.

In passing it should be said that the allegation of such facts, wholly hearsay and unsupported by proof, and set forth in the nature of a conclusion, are properly challenged by a motion to strike.

As to the first three counts—of what materiality is the fact that the same crimes were covered by an indictment during the first extension of the term? Nothing could be better evidence of the fact that the investigation relative thereto was "not finished" during that extension than the fact that the grand jury found it necessary to present a second indictment to cover the same offenses. (The majority opinion concedes the right to continue investigations, even after the return of a first indictment. What is there

then to prevent the indictment, on this issue, being valid as to the first three counts, and therefore valid support of the judgment?)

We ought not ignore the well-established rule that rulings on motions to quash and plea in abatement to indictments are not reviewable here, for "unless (there is) such a failure to properly exercise judicial discretion as to cause real injustice * * * defendant can not complain where no prejudice has resulted * * *"⁷

The majority opinion states, "We are unable to discern how an illegal order of continuance can be cured or even aided by an allegation in the indictment to the effect that the Grand Jury was continued." Admitting that an illegal order of continuance is void, my position is that the instant order is neither illegal nor void when construed in the light of the facts shown by the indictment and the continuing nature of the crime under investigation. The indictment does not recite that the grand jury was "legally continued." It recites facts from which that deduction is inescapable.

The indictment states all the investigations were begun at the December Term. The first order directed them to continue only investigations begun at the first term. The second order permits them to "continue to sit for the purpose of finishing said investigations." The petition upon which the second order was based recited the grand jury had been theretofore authorized to sit during the February Term (note, it was only to finish investigations begun in December) and asked to be authorized "to continue to sit to finish investigations begun but not finished by * * * (them) during the said December 1939 and the said February 1940 terms."

Why can not the time phrase "during the said December and the said February terms" be construed to modify merely the verb "finished" and not the preceding verb, "begun"—and the verb "begun" be read in the light of the first order of continuance, to mean "theretofore begun" in the December Term? I can reach no other conclusion than that a fair reading of the two petitions for extension of time and the language of the indictment wherein the grand jurors stated that they continued "to sit for the purpose of finishing investigations begun but not finished during said December Term of Court," closes the door to further discussion.

Another reason for this conclusion is to be found in the word "investigation" as used in this statute. "Investigation" is a noun which defines action. Alone, it is indefinite and well-nigh meaningless. The grand jury began its investigation when sworn in.

⁷ Lonsdorf, *Cyclopedia of Federal Procedure*, Sec. 2132, 2135.

(Charge of Justice Field, Federal Cases No. 18,250. Note to A. L. R. Vol. 22, p. 1356. Blair v. U. S., 250 U. S. 273). Investigation of what? Of crimes which were committed in the District? If this be its meaning then the field of investigation after the continuance, was limitless. This all-inclusive meaning must be rejected, I think, if for no other reason than that it renders meaningless the sentence wherein the word appears. The word "investigation" must have a more restricted connotation. A more limited and rational meaning of this word may be had if we bear in mind what the grand jury is organized for, and to emphasize the fact that it is to investigate facts. Being laymen (usually), they are hardly qualified to investigate legal questions such as are raised by counsel for accused after the indictment is returned. The grand jury investigates the facts brought to its attention, which facts establish or point to the commission of a crime.

To illustrate—Before the grand jury, appears a witness, and tells of D's making and selling large quantities of liquor. Other witnesses confirm the story. The search is continued. The trail becomes hot. Defendant is not the only one involved. It appears the territory covered by the operations is extensive and the business, large. The participants are numerous. Also, it appears that a master mind behind the scenes directs the operation of all. He divides the spoils, retaining a goodly portion for himself.

The grand jury is unable to complete its study within the month and asks for, and secures, an extension of time in which to "investigate." To what must its investigation be confined during the continuance?

Let us go further with our imaginary case. During the second month's investigation the proof becomes more definite and clear as to individuals, as to crimes committed, and also of a conspiracy to commit them, as well as the names of the parties thereto. In justice, however, to the individuals, possibly innocent, whose names have been on the tongues of several witnesses, more time is needed and a second order of continuance is sought and obtained.

Finally, the indictments are about to be drawn. Unexpectedly, a witness appears who gives testimony which, in view of the previous stories, is entitled to great weight. He admits his own participation in the enterprise. He is an actor who played a leading role in the tragedy. He is an accomplice, and his motive is to obtain immunity. However, he adds a new phase to the case. He tells the story of the inside working of the crimes. The long-continued success of the enterprise is due to the fact that the master mind has repeatedly bribed a revenue agent and thereby avoided prosecution.

Was the new crime, to wit, bribery of the Government officer a part of the original investigation? Who is to determine when the grand jury investigation began, which disclosed not only the commission of substantive crime, but of conspiracy? If there were separate investigations, when did one end? The other begin?

Under the holding of the majority opinion the grand jury could not indict except for the substantive crimes which had been proven in the first month's investigation. Moreover, the court (and perhaps a petit jury) was required to first try and determine when the investigation of count one began—and also of counts 2, 3, 4, and 5. The statement of the grand jury in its indictment is of no avail.

The more logical construction of the word "investigation", as here used, it seems to me, can be had by limiting it to those matters which engaged the attention of the grand jury during the December Term, but not restricting it to crimes which had been established during that first month's inquiry. If the facts established by the testimony brought out on the second or third continuance of the grand jury disclose a crime or crimes, and such facts are associated with the subject matter of the investigation of the first term, the grand jury may validly indict therefor.

The rights of defendants charged with crime should always be diligently protected. Courts and grand juries, statutory creatures that they are, should never exceed their statutory powers. But, just as important, is the binding force of a conviction of one accused of crime, whose long and carefully contested trial has resulted in a verdict of guilt. We must not be deceived by astute presentation of a hypercritical contention which delves into the niceties of every possible technical defect, be it, as here, the ambiguity of the second order continuing the grand jury term, or the question of duplicity, discussed immediately following. Pleadings and orders in criminal cases should be read and construed rationally and reasonably and fairly. Grand juries and indictments are to prevent false and malicious charges and to inform defendants of the charges upon which they must stand trial. That is their sole purpose.

2. Duplicity.—Was there duplicity? Was there a charge that the codefendants were accessories after the fact?

The specific wording of the counts challenged negatives any intent to charge a crime other than aiding and abetting the crime of attempting to evade the income tax for each year. The language is clear and only hypercritical deductions can support a contention that the crime of accessory after the fact was also meant to be charged. As was said by this court in *Meyer v. U. S.*, 258 F. 212, 214,

"Another contention is that the indictment does not show that the overt act was done to effect the object of the conspiracy. Invoking the rule that inferences are to be taken against the pleader, plaintiffs in error insist that we shall infer that they lawfully turned over the * * * check * * *. But the rule does not extend to imagining inferences that are contrary to the fair common sense reading of the averments."

Obviously the attempt to evade a tax is a continuing crime, running to the date of the Government's discovery and indictment therefor. It may, of course, encompass several distinct offenses in the course of its duration. The attempt is effectuated in part by the filing of the return on March 15, partly by concealing of records, failure to keep books, continued holding by others of income-yielding businesses of taxpayer, etc. The crime of attempt is not necessarily ended with the filing of the return, if the attempt in fact continues thereafter. Neither is the crime of aiding the attempt, there ended. The attempt to evade may be, and often is, finally terminated on its discovery by the Government. This reasoning does not, however, preclude the indictment of the taxpayer for some isolated act effecting the attempt, such as the filing of a false return on a particular day.

Counsel stress the fact that codefendants are charged with aiding not only before March 15, of each year, but continuously thereafter, to the date of the indictment. Aside from the suggestion just made, that the crime of aiding the attempt actually continued for such period, it may be pointed out that Johnson, the principal, was charged not only with filing a false return on the particular date specified, March 15, but—without specifying the time—charged that he concealed from the Government officers his income and all books and records reflecting such income.

A plain reading of the counts discloses the charge of but one offense, i. e., aiding and abetting the offense.

But, conceding there was a multiplicity of offenses charged, was it a prejudicial or reversible error? Not if the inescapable trend of precedents upholding indictments against attack on the ground of duplicity where no prejudice is shown, be followed.*

* *Jelke v. U. S.*, 255 F. 284:

"Decisions that reject technical objections to criminal indictments are not now the exception, and an overwhelming array of authorities may be found that call for liberal construction of criminal pleadings (citing many cases)."

"While perhaps instructive, we are convinced that many of the criticisms made are hypercritical and evidence scholastic ingenuity, but if adopted in this case, or applied to the average indictment, 'would rightly bring odium upon the administration of justice in the minds of all sensible people, whether learned in the law or not.'"

In *Hewitt v. U. S.*, 110 F. 2d 1, 5, the Eighth Circuit said (quoting the Supreme Court in part):

"The rigor of old common law rules of criminal pleading has yielded, in modern practice, to the general principle that formal defects, not prejudicial, will be disregarded. The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense

Language of Indictment Indicative of Charge of Single Crime, in each Count.—A study of the indictment plainly reveals Johnson (in count one) is charged simply with an attempt to defeat and evade income taxes in that he “did wilfully and knowingly attempt to defeat and evade a large part * * * of a tax upon his net income for the calendar year 1936 * * * which said wilful attempt * * * was by means and in the manner following (here follow numerous recited acts, in themselves offenses, which Johnson claims rendered the indictment duplicitous as to him) * * *.” As to codefendants, it is specifically charged that “during the calendar year 1936 and up to and including March 15, 1937, and continuously thereafter up to and including the date of filing this indictment * * * (naming codefendants) did unlawfully, feloniously, willfully and knowingly aid, abet, conceal, induce and procure the said defendant Johnson * * * to attempt in the manner aforesaid to evade and defeat the income tax aforesaid * * * by the means and in the manner aforesaid * * * (26 U. S. C. A. Sec. 145).

The codefendants are charged merely with aiding in such attempt. They are not charged with being accessories after the fact as they allege, but merely with continuously aiding the attempt. The words “feloniously aid in the attempt in the manner aforesaid” conclusively show the pleader had but one crime in mind, and that was not the misdemeanor of an accessory after the fact.

Moreover, duplicity does not arise from the fact that the allegations would support the charging of two crimes, if in fact only one be charged or adequately stated.” I think that is the instant situation.

intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet, and in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.

“This section was enacted to the end, that while the accused must be afforded full protection, the guilty shall not escape through mere imperfections of pleading * * *

“The sufficiency of an indictment should be judged by practical and not by technical considerations. It is nothing but the formal charge upon which an accused is brought to trial. An indictment which fairly informs the accused of the charge which he is required to meet and which is sufficiently specific to avoid the danger of his again being prosecuted for the same offense should be held good.”

The Fifth Circuit said, in *Hartwell v. U. S.*, 107 F. 2d 359, 362.

“While it is certainly true that a valid indictment can not be dispensed with as a predicate to conviction where an indictment is necessary * * *. It is also true that the practice of fine combing indictments for verbal and technical omissions is no longer countenanced in courts, and that a substantial compliance with the purpose of an indictment to acquaint the defendant with the offense of which he stands charged, so that he can prepare his defense and protect himself against double jeopardy, is sufficient.”

* In *Howell v. U. S.*, 296 F. 911, the Fifth Circuit said:

“It thus appears that it is an offense for a dealer to fail to register and to pay the special tax, and that it is another and separate offense for any person to purchase or sell derivatives of opium or cocoa leaves, such as * * *, except in form of packages to which the tax paid stamps are attached.

“Each of the offenses above named should be charged in separate counts of an indictment because they are separate. That part of the indictment which charges that the defendant as a dealer was required to register, and that he unlawfully dealt in the prohibited drugs, does not charge that he failed to register. The indictment, therefore, does not charge one of the two offenses, and it follows that the language just referred to is surplusage. But the indictment does charge that the defendant was a dealer, and dealt in and had in his possession narcotics to which the stamps evidencing

Where Several Crimes Recited Are Incidents of One Transaction There Is No Duplicity.—Duplicity does not arise where the offenses charged are merely varying aspects or incidents of the same transaction.¹⁰ The principal offense here charged was the

the payment of the internal revenue tax were not attached. It therefore sufficiently charges the second of the offenses above mentioned. The form of the indictment is imperfect, but in our opinion it is sufficient to uphold the conviction of the defendant as a dealer, for the reason that the attempt to charge the failure to register was not successful.

In *May v. Commonwealth of Ky.*, 230 Ky. 656, 66 A. L. R. 1297, the Kentucky Court of Appeals said:

"The effort to charge appellant as an aider and abettor, after charging him and G. as principals, and without setting out the charge of aiding and abetting in a separate count, does not render the indictment as a whole defective (the indictment was in one paragraph). . . . In *Watkins v. Com.*, 227 Ky. 100 . . . an indictment for murder charging two defendants as principal and as aiders and abettors in a single count, was held sufficient."

27 American Jurisprudence, Indictments and Informations, Sec. 126, page 686:

"Although at common law different grades of the same offense cannot be included in the same count, it is now the generally approved practice to allow the different grades of the same offense to be thus joined, as also an offense or offenses included in the principal crime charged, although it is the more usual practice to set up the several grades or degrees in different counts. An indictment against two persons which charges both as principals and later in the same count charges the accused alone with aiding and abetting in the commission of the offense, is not defective for not stating the latter charge in a separate count."

In *Kitzell v. U. S.*, 76 F. 2d 333 (C. C. A. 10) the court said:

"It is said that each (count) is bad for duplicity in that each charges an attempt to defeat and evade the tax and a failure to make a return, and that the only method of tax evasion charged is the failure to make return. But the third count does not charge . . . Nor can it be maintained that either of the counts is duplicitous. The questions thus raised seem to now be authoritatively settled against appellant's contention."

The Court, in *Connors v. U. S.*, 158 U. S. 408, 410, said:

"The first assignment of error questions the sufficiency of the indictment in that it charges the accused, as he insists, with three different offenses in one count, namely unlawfully and with force and arms seizing, carrying away, and secreting the ballot box; . . . that having aided and assisted in the forcible and unlawful seizure . . . and with having counselled, advised, and procured the seizure."

"This objection to the indictment is not well taken. The offense charged was that of unlawful interfering with the officers of the election in the discharge of their duties . . . The verdict of guilt had reference to that crime, whether committed in one or the other of the modes specified in the indictment. Undoubtedly it was in the discretion of the court to compel the prosecutor to state whether he would proceed against the accused for having himself seized, carried away, and secreted the ballot box, or for having assisted or procured others to do so. But there was no motion . . . to make such statement . . . nor, if made by demurrer or by rights of the accused were prejudiced by the refusal of the court to require a more restricted or specific statement of the particular mode in which the offense charged was committed. There is no ground whatever to suppose that the accused was taken by surprise in the progress of the trial, or that he was in doubt as to what was the precise offense with which he was charged. . . ."

In *Cain v. U. S.*, 162 U. S. 625, 636, The Supreme Court said:

"We are of the opinion that the objection to the second count upon the ground of duplicity was properly overruled. The evil that Congress intended to reach was the obtaining of money from the U. S. by means of fraudulent deeds, powers of attorneys, orders, certificates, etc. . . . The statute was directed against certain defined modes for accomplishing a general object, and declared that the doing of either one of several specific things each having reference to that object, should be punished by imprisonment. . . . We perceive no sound reason why the doing of the prohibited thing, in each and all of the prohibited modes, may not be charged in one count, so that there may be a verdict of guilty upon proof that the accused had done any one of the things constituting a substantive crime under the statute. And this is a view altogether favorable to an accused, who pleads not guilty to the charge contained in a single count; for a judgment on a general verdict of guilty upon that count will be a bar to any further prosecution in respect of any of the matters embraced by it."

In *Skellie v. U. S.*, 76 F. 2d 483, the C. C. A. Tenth held:

"The acts of a principal to a substantive offense and the acts of an accessory after the fact thereto, are one continuous criminal transaction. At common law the principal and accessory after the fact may be jointly indicted and where so indicted they should be charged in one count. . . . Therefore the acts of the two constitute a single offense committed by them jointly, one acting as principal and the other as accessory after the fact."

U. S. v. Locke, 34 F. Supp. 982, aff'd, 118 F. 2d 246; *Spurworth v. U. S.*, 10 F. 2d 711; *U. S. v. Ford*, 18 F. 901; *Rowan v. U. S.*, 281 F. 137; *Evans v. U. S.*, 957 F. 678; *Greenbaum v. U. S.*, 80 F. 2d 113; *Kucrak v. U. S.*, 14 F. 2d 109; *U. S. v. Otto*, 54 F. 2d 277; *Jacobsen v. U. S.*, 272 F. 399; *Connors v. U. S.*, 158 U. S. 408.

attempt to evade income taxes. The codefendants' offense was aiding that attempt. They gave such aid before the filing of the return by filing separate returns which misled the Government as to the true ownership of the houses, and, after the return, by concealing, failing to keep, or destroying, records, and by continuing the deceptive ownership of the various houses. All the acts were simply means of effecting their crime of aiding the attempt—that was all that was charged by the indictment or punished by the sentence. I have very serious doubt that an aider of the crime, who is punished as a principal, could also be punished as an accessory after the fact, even if it were so charged. When he becomes a principal, the other offense becomes merged. Otherwise, an aider before the fact and after the fact could be more seriously punished than the principal, which was hardly within the contemplation or purpose of the Act.

Allegation of Dates May Be Treated as Surplusage.—The indictment which gives rise to the alleged duplicity concerns the dates, or period, covered in connection with the said complicity of the codefendants. Such dates or allegation of period may be treated as surplusage. The date is not a material element of the offense charged—and the period beyond the March 15, if that be taken as the crucial date, may be considered as surplus allegation¹¹ or be corrected by the facts proved.¹²

Duplicity may be error of form, which under 18 U. S. C. A. Sec. 556, does not render the indictment bad.¹³

Looking at this matter of the allegation of the continued aid of the principal's attempt to evade each year's tax, from an ordinary, common sense viewpoint, we have simply a case of A, B, C, D aiding E to evade 1936 tax by X means, and aiding the attempt to evade the 1937, 1938, and 1939 taxes by the same X means—they have really but used the X means continuously to assist the effectuation of the annually recurring attempt, and, since the assistance covered at least four years, and appertained to all years' taxes, this assistance is, unfortunately for the co-defendants, made four offenses by virtue of the statutory annual recurrence of criminal liability. Since such assistance existed in each year as to that respective year's taxes, and perhaps inferentially, though not inevitably, as to the preceding year's or years' taxes by virtue of the Government's failure earlier to discover the scheme, no prejudice and no untruth in allegation occurred.

¹¹ *Capone v. U. S.*, 56 F. 2d 927; *Sondericker v. U. S.*, 41 F. 2d 144, see also, *Meyer v. U. S.*, 258 F. 212; *Johnson v. Biddle*, 12 F. 2d 366; *Farley v. U. S.*, 269 F. 721; *Sugar v. U. S.*, 252 F. 75; *U. S. v. Socony Oil Co.*, 310 U. S. 150.

¹² *Clayton v. U. S.*, 284 F. 537; *Morgan v. U. S.*, 148 F. 189; *U. S. v. Rogers*, 226 F. 512.

¹³ *U. S. v. Meyering*, 54 F. 2d 621.

Where there is no prejudice, no reversible error results from duplicity."¹⁴

No Prejudice Where A Sentence Is Supported by One Valid Count.—It is most important to recognize the fact that the judgment of sentence and fine on each of the substantive counts was to run concurrently with that imposed on the first count. Under the well-settled rule, if one count supports the judgment, it will not be overruled even though other counts do not sustain the judgment.¹⁵

Does not the first count sustain the judgment? What is the sentence and fine? Are they not merely the maximum penalty for one found guilty as an aider and abetter, i. e., as principal (and not accessory) in attempt to evade?

Reading this evidence with a most indulgent eye and giving the verdict the credence and weight which is its due in a criminal case, I can not, in all generosity to these defendants, charged with attempting to evade, or assisting in such evasion, find it possible to say there was no evidence for any of the years, 1936 to 1939, to sustain the verdict and judgment.

Statutory Reference in Count to the "Attempt" Statute, Not the "Accessory After the Fact" Statute.—The counts of the indictment here challenged refer to but one statute as the foundation of the indictment, namely, the statute making it an offense to attempt to evade income taxes (26 U. S. C. A. Sec. 145). It does not cite the "accessory after the fact" statute, 18 U. S. C. A. Sec. 551. The indictment uses substantially the phraseology of said statute and specifies the crime to be, inter alia, a "felonious" aiding and abetting, which it could not be if the charge were one of accessory after the fact, which is a misdemeanor.

Bill of Particulars Indicated Single Offense of Aiding Was Charged.—The bill of particulars (Part VI, A) is illuminative of the pleading in the indictment relative to the "continuous nature of the aiding and abetting, namely, that the identical scheme for aiding continued throughout the years, i. e., the fictitious ownership of the various houses, the filing of false returns, each relative to the particular year's taxes attempted to be evaded. Even as to acts which might most readily be construed to be acts of an accessory after the fact, such as in Part VI A 10 of the bill of particulars—"On December 29, 1939, * * * (co-defendants) made a false statement to certain Internal Revenue

¹⁴ Morgan v. U. S., 148 F. 189; Bailey v. U. S., 278 F. 489; Lewellen v. U. S., 223 F. 18; Nudelman v. U. S., 264 F. 942; Wetzel v. U. S., 233 F. 984; Sparks v. U. S., 90 F. 2d 61; Clayton v. U. S., 284 F. 537.

¹⁵ New v. U. S., 10 F. 2d 146; Hawkins v. U. S., 1 F. 2d 596; Reuben v. U. S., 86 F. 2d 464; Aczel v. U. S., 232 F. 653; Greenburg v. U. S., 253 F. 728; Taylor v. U. S., 2 F. 2d 444; Clifton v. U. S., 45 U. S. 242; Claassen v. U. S., 142 U. S. 140; Powers v. U. S., 223 U. S. 303; U. S. v. Trenton Potteries, 273 U. S. 392.

officers." But this accusation is followed not by a charge of being accessory after the fact, but by the allegation "and thereby did then and there knowingly aid and assist said Johnson in wilfully attempting to evade and defeat * * * the payment of his individual income taxes * * *."

Instruction Was Only for Offense of Aiding.—The charge to the jury covered solely the "aiding and abetting offense" and a reading of the statute providing therefor and making an aider a principal.¹⁶ The court in instructing the jury said

"Generally speaking, counts 1, 2, 3, and 4 charge the defendant, William R. Johnson, with wilful attempt to defeat and evade income taxes alleged to be due * * * and charge the other defendants with aiding, abetting, inducing, and procuring the defendant, Johnson, in his attempt to defeat and evade. (Then quotes the statutory provision on aiding and abetting.)

"Accordingly, it is the law that one who aids, abets, counsels, commands, induces, or procures the commission of a crime is a principal, and you may consider Counts 1, 2, 3, and 4 of the indictment as charging that all of the defendants wilfully attempted to evade and defeat the income taxes alleged to be due from * * * Johnson * * *."

Sentence Was Only for Offense of Aiding.—The sentences of the codefendants were solely for the "aiding and abetting" offense (and conspiracy). There was therefore no prejudice to the defendants, and it is indicative, as was the instruction, that but one offense was alleged, tried, and found.¹⁷

Indictment in Language of Statute Sufficient.—The offense of aiding and abetting was charged in substantially the language of the statute, and is sufficient. It was not subject to demurrer, motion to quash, or demand to elect. The indictment charges the codefendants did "unlawfully, feloniously, wilfully, and

¹⁶ In *Lewellen v. U. S.*, 223 F. 18 (CCA 8), the court said:

"It is probable that the U. S. attorney was either uncertain about the law or the facts of the case and attempted to make averments in one count charging both offenses. This is not permissible; but as there was no special demurrer for duplicity or other attack upon the indictment, and as the trial judge instructed the jury concerning the law governing the second-mentioned offense only, namely, the carrying of liquor from without the state into the Indian Territory, and as under that charge the defendant was found guilty 'as charged in the indictment' and sentenced accordingly, this court will treat the indictment in the same way as charging a violation of the offense denounced by the Act of 1895 only."

In *Wiborg v. U. S.*, 163 U. S. 632, the Court said:

"Defendants' counsel did not seek to compel an election, nor in any manner by their motion to arrest or otherwise, to raise the question of duplicity, nor do they now make objection to the proceedings on this ground. The district judge instructed the jury that the evidence would not justify a conviction of anything more than providing the means for aiding such military expedition by furnishing transportation for their men * * *. Under these circumstances, the verdict cannot be disturbed on the ground that more than one offense was included in the same count of the indictment, but it must be confined to the offense to which the jury were confined by the court."

¹⁷ Refusal of trial courts to direct an election of offenses charged has been held to be nonprejudicial where but one sentence was imposed. *Nudelman v. U. S.*, 264 F. 942; *Wetzel v. U. S.*, 233 F. 984.

knowingly, aid, abet, conceal, induce, and procure the said defendant Johnson * * * to attempt in the manner aforesaid to evade and defeat the income tax." The "aider" statute provides, whoever "aids, abets, counsels, commands, induces, or procures its commission, is a principal." These two phraseologies are sufficiently parallel to render the former an allegation simply of an aider of the attempt and an allegation of the offense in the statutory terms and therefore valid.¹⁸

3. Witness Clifford's Answer to Hypothetical Question.—The majority opinion stresses the error arising from the Government's accountant Clifford's testimony, who, it is contended, by defendants, usurped the jury's function,¹⁹ when answering a hypothetical question—to the effect that Johnson had a taxable income in excess of that which he reported.

It is conceded that hypothetical questions have their proper place, but they must be predicated on stated assumptions as to evidence presented, and the witness is not to be permitted to decide the ultimate facts and thereby usurp the jury's function.

But merely studying the quotations of the record given in the majority opinion it is obvious that the answers were to questions framed on assumptions. He is asked the amount of Johnson's income, say for 1936, according to his computations, with "exhibits and evidence in the record" "used as a basis for his computation." The "exhibits and evidence" were Johnson's tax returns, certified copies of local assessment lists, escrow agreement, Bon Air records, accountant Horwath's records, etc."

An accountant may be permitted to total income from all the sources mentioned in the exhibits he has identified and state such total solely as "his computation." The defendants can in defense show their evidence, and the jury's function is to make their own computation, guided, if they wish to be, by the accountants for the respective sides.

Whether or not Johnson had income in excess of that which he reported was one of the facts which the jury had to determine

¹⁸ *Tinkoff v. U. S.*, 86 F. 2d 568; *Capone v. U. S.*, 56 F. 2d 927; *Yip Wan v. U. S.*, 8 F. 2d 478; *Rowan v. U. S.*, 281 F. 137; *Jelke v. U. S.*, 255 F. 264; *Peck v. U. S.*, 65 F. 2d 59; *Chiaravallotti v. U. S.*, 60 F. 2d 192; *Guzik v. U. S.*, 54 F. 2d 618; *Wygant v. U. S.*, 6 F. 2d 148; *Pounds v. U. S.*, 171 U. S. 35; *Ledbetter v. U. S.*, 170 U. S. 606.

¹⁹ On the "usurping of the province of the jury" Wigmore states, Sec. 673: "This being the plain, logical, and necessary reason for the use of the hypothetical question, it will easily be seen that it is not resorted to from any fear that the witness will 'usurp the function of the jury.' This bugbear, vigorously denounced with sentimental appeals to the value of jury trial, has been made to serve again and again as the dreadful source of those evils which the hypothetical question enables us to avoid. But the expert is not trying to usurp that function and could not if he would. He is not trying to usurp it, because his error, if any, is merely the common one of witnesses; that of presenting as knowledge what is really not knowledge. And he could not usurp it if he would, because the jury may still reject his testimony and accept his opponent's, and no legal power, not even the judge's order, can compel them to accept the witness' statement against their will. . . . The 'usurpation' theory has done much to befog bench and bar, and to assist in producing some of the confusion which attends the precedents."

from all the evidence. The jury could and probably did reject some evidence as not credible or relevant. If it did not believe the Bon Air records were pertinent to Johnson's income tax liability, they could be discarded, and the jury could also throw out Clifford's conclusions along with it.

We are here dealing with a long trial wherein the defendants exercised their right to a jury trial. We cannot assume that the jury failed to properly weigh the evidence or that it lacked the intelligence to understand what the charge involved and the nature and quantum of proof necessary to sustain the charge. It would indeed be hard to believe that any juror failed to understand that the witness' answer was not based on said witness' assumption of taxable income.

Both counsel cite the Guzik case, (54 F. 2d 618). The case favors the Government's contention though not a square holding that the identical question here under review was proper. It was there said:

"Objection was made to the submission of a hypothetical question asking a witness to calculate the amount of tax which would be due on the assumption that the government's evidence (bank deposits and dividends, etc.) reflected taxable income. Since the computation is merely an arithmetical process, thereby avoiding any difference of opinion as to the result, the objection must be considered as directed to the assumption that the items set forth were income. Objection was also made that such question did not include certain other facts tending to show losses. In discussing the limitations on hypothetical questions, Jones, in his *Commentaries on Evidence*, states: '* * * Where the facts are in dispute it is sufficient if a hypothetical question fairly states such facts as present the examiner's theory of the case.' It cannot be expected that the interrogatory will include all the contentions or theory of the adversary, since this would require a party to assume the truth of that which he generally denies. * * * Each side, in an issue of fact, has its theory of what is the true state of the facts, and assumes that it can prove it to be so to the satisfaction of the jury, and so assuming, shapes hypothetical questions to experts accordingly. A question should not be rejected because it does not include all the facts of which there is any evidence at all. * * * Generally speaking the trial court is the arbiter of the propriety of the question; and the real test of the propriety of any given hypothetical question is its fairness. * * * We conclude that the government's assumption that the receipts constituted evidence of income was the valid basis for the hypothetical question submitted. The jury still had to determine the controverted issue of whether the assumption were correct."

If one were to frame a technically correct hypothetical question in this kind of case, the preamble would be so long the jury would be unable to retain the facts on which the question was predicated. Hundreds of items would need to be considered in determining Johnson's annual income. A hypothetical question including them in its premise would be of doubtful value.

Moreover, guilt does not depend on a finding that every item which the Government claims should be included, be accepted by the jury. It was not every item which was decisive of the outcome.

Another factor in the framing of hypothetical questions arises where the witness has just testified to the facts on which the question is based. That was the case here. In such instances, it is hardly necessary (unless the situation necessitates the recital so that the jury will understand the answer) that all the testimony which he has just given should be restated at length in the question.³⁰

4. It is contended that the proof does not sustain the conspiracy charge—i. e., appellants were not shown to have conspired specifically to aid Johnson in his attempt to defeat his income tax. It may be admitted that they acted jointly, even conspired, but, so it is argued, the object of their joint action was not to defraud the U. S. Government out of its income taxes, but to avoid prosecution of the Illinois statutes dealing with gambling.

The jury found that the income of the respective houses belonged to Johnson by virtue of his ownership of them—a fortiori, neither the income nor the houses belonged to the co-defendants, and they therefore were intentionally combining to mislead the Government in income tax matters by filing tax returns as owners of the houses when in fact they knew the houses and their income belonged to Johnson, and should have been reported by him. It would be strange that this same group should go on year after year filing these deceptive returns if it were not done pursuant to an agreement of each co-defendant with Johnson.

The rather nebulous strands with which the Government's evidence wove the several defendants together convinced the jury

³⁰ Wigmore, Sec. 675. "But does it follow that, when the opinion comes from the same witness who has received the basis of it by actual observation, those premises must be stated beforehand, hypothetically or otherwise, by him or to him? For example, the physician is asked, 'Did you examine the body?' 'Yes'; 'State your opinion of the cause of death.' Is it here necessary that he should first state in detail the facts of his personal observation, as premises, before he can give his opinion?"

"In academic nicety, yes; practically, no; and for the simple reason that either on direct examination or on cross-examination each and every detail of the appearance he observed will be brought out and thus associated with his general conclusion as the grounds for it, and the tribunal will understand that the rejections of these data will destroy the validity of his opinion."

"Through failure to perceive this limitation, Courts have sometimes sanctioned the requirement of an advance hypothetical statement even where the expert witness speaks from personal observation. . . . But this fallacy of being too unpractical in forcing the logic of the theory is generally and properly repudiated."

that each defendant knew his place in the scheme and knew of the others' participation. We cannot review such evidence. The credibility of the witnesses, some in denying all intent of conspiracy to attempt to evade income tax, and others, in giving evidence of a common enterprise, to deliberately mislead the Government in its ascertainment of income received—is not for us to review. The jury alone must weigh the words of those who appear before them and neither this nor the district court can set aside its findings.

It should also be mentioned that the sentence imposed upon the conspiracy count (which punishment is lesser than on the substantive counts) was by the judgment made to run concurrently with the other sentences. Wherefore it follows that the judgment must be affirmed if the conviction in any substantive count be sustained.

It may be admitted, so it is argued, that all the defendants acted jointly, even conspired together, but the object of their joint action was not to defraud the United States Government out of its income taxes, but to avoid prosecution for gambling under the Illinois statutes.

It is, of course, conceded, that a conspiracy may be established by circumstantial evidence. But, defendants argue, it must be established—and the conspiracy must be the one charged in the indictment. To meet this requirement, the Government's proof disclosed deceptive ownership of gambling houses and the filing of income tax returns by co-defendants, as owners, when, in fact, neither the property nor the income was theirs. This alone not only tended to establish, but rather conclusively proved the joint effort was to avoid income taxes, not to avoid local prosecution for gambling. Rather persuasive is the argument that no other motive could have prompted the defendants to falsely deny to Government investigators the ownership of the houses. For it is hardly conceivable that individuals would falsely subject themselves to income tax liability if the conspiracy was not to evade the income tax of the large taxpayer. The jury was justified in assuming that the crux of this case turned on the answer to the question, To whom did the gambling houses belong and who was entitled to the income from their operations?

If these houses belonged to Johnson and he was entitled to the income and he excluded such income from his income tax returns and other defendants included such income as part of their returns when it was not in fact their income, then the crimes charged in the indictment were established. Of this there can be no doubt.

The proof of the ownership of the property, as well as the income, was not even circumstantial in character. It was direct and

positive. Defendants' only hope of escaping from its telling effect was to show the testimony of the Government witnesses to be false. This they endeavored to do. Apparently the jury disbelieved their witnesses and accepted the testimony of the Government witnesses. Reduced to its last analysis, this issue determined the merits of the case. We have been favored with instructive briefs. A clearer case for the jury could hardly be presented.

There are many other assignments of error. The trial was long, and the questioned rulings are numerous. The trial court's refusal to instruct the jury as requested; its rulings on admission and rejection of evidence; its participation in the examination of witnesses—all come in for criticism and challenge.

In short, it is earnestly argued that the defendants were not given a fair trial.

The case was one which necessitated great care to prevent, if possible, the prejudice which jurors might naturally entertain against individuals who admitted they had long been, and were professional gamblers operating on a big scale, from affecting their deliberations of the charges stated in the indictment and which did not involve crimes arising out of their gambling operations.

Defendants were entitled to a fair trial on the charges preferred against them. Their guilt of offenses not charged in the indictment had no bearing (save as it may have affected credibility) on the charges set up in the indictment. In order that our judicial system and practice in criminal cases be vindicated, the utmost care is required so that no ruling or comment by the court take place which would have the effect of communicating to the jury an impression that the court was unfavorable to defendants.

In view of the fact that the case is to be reversed and dismissed, according to the majority opinion, I call attention merely to one instruction of the trial judge to show its eminent fairness.

The court said:

"You must not permit the kind of business in which the defendants were engaged to prejudice you against them or any of them. The fact, if it be a fact, that some defendant or defendants committed some offense against the laws of the United States or the State of Illinois other than those charged in the indictment creates no presumption that such defendant or defendants committed the offense here charged against him or them."

The language speaks for itself. It was clear, explicit, and positive. Defendants could not ask for more. Their requests may have been more wordy and more argumentative, but they did not better state the law than the foregoing instruction.

It was not necessary that the trial court give instructions in the language of defendants' counsel, provided the substance of this proposed charge was clearly and fairly stated. The charge is often better when couched in the language of the judge for it is fairer and less argumentative and prejudicial.

There are two different theories or conceptions of trials in criminal cases. The one which appeals to me, views the trial as a means of ascertaining a fact—that fact being the guilt or innocence of the accused.

Rules governing such trials favor the accused. This policy of favoring the accused is the result of generations of experience. It has for its background the making certain that no innocent person shall be convicted—that it is better that many who are guilty be acquitted than one innocent person be convicted. The rules which ordinarily accomplish this result are too well known to require restatement. Except for them, a fair trial in a criminal case is quite similar to that in a civil case. In both cases, it should be a search, through competent and relevant evidence of the best nature, for the truth.

On one side is society seeking to protect itself and restrain the violator from stepping outside the law to enrich himself or to accomplish a selfish end at the expense of others. On the other side is the accused, in whose favor presumptions are created to protect him in the enjoyment of his liberty and in his reputation as one of a society of law-abiding citizens.

Although the personal element will always be more pronounced in a criminal case than in a civil suit, the controversy should, in the last analysis, be simply an honest inquiry into the accused's guilt or innocence.

The other theory of a trial in a criminal case is entertained by members of the bar engaged chiefly in handling criminal cases. To them it is a fencing contest between counsel, where the real issue of fact, to wit, the guilt or innocence of defendant is lost in the heat of the duel between opposing counsel. The sole effort is to inject error into the trial. The longer the trial the better the chance of error. Hence a jury trial is demanded for the opportunities of injecting error are thereby multiplied. And every erroneous ruling is presumptively prejudicial.

This theory finds some support in early judicial precedents. Such holdings rise to dominant importance if only they be in point. And that is so regardless of their vintage or the absence of sound reason to support them. In this view all later cases ignoring or inferentially overruling such earlier precedents, are brushed aside as out of harmony with the rule which gives the

accused the benefit of all doubts. This view necessitates the rejection of reason and all growth, change, or development of the law in the field of criminal trials.

Admittedly this view makes for excitement and uncertainty in criminal cases, emphasizes the emotional side of all participating therein, and gives to the public—particularly the curious public—an opportunity for a thrill. In my opinion it is not promotive of justice, places a premium on long trials, adds to the expense, encourages questionable practices, and often brings the administration of justice into disrepute with law-respecting and law-abiding citizens.

A jury trial is demanded, not because of greater faith in the jury's ability to ascertain the truth, but because jurors are often more easily confused by a long trial, and errors are more likely in a long jury trial.

Stipulations of facts are never made, not because the facts are uncertain or unknown, but because some technical error may occur in the introduction of their proof, or the prosecution may have difficulty in securing the attendance of all its witnesses at one time. A pretrial conference is never held because the court is powerless to call one. There is no effort, as in a civil case, to confine the trial to the controverted issues. In short, the protection of society against the raids of its transgressors is overlooked or forgotten, and the decision goes according to the technical rules of the fencing contest.

It seems to me that the holding of the majority of the court is a vindication of the second theory above referred to. No prejudice to defendants is shown. A fairly drawn grand jury presented a charge, and a trial with conviction occurred. Not merely reversal but reversal with dismissal is ordered because the charge is made by a grand jury which obtained an order for its continuance so as to complete its investigation. Because perchance its investigation may have exceeded the crimes uncovered at its first term's study, its authority to act in any and all respects is lost.

On the entire record I am convinced that there was no prejudicial error committed, and that the judgments should be affirmed.

A true Copy:

Teste:

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

And on the same day, to wit: On the fifteenth day of September 1941, the following further proceedings were had and entered of record, to wit:

Monday, September 15, 1941

Court met pursuant to adjournment.

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court.

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS, ET. AL., DEFENDANTS-APPELLANTS

Appeal from District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the Transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this Cause appealed from be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court.

And afterwards, to wit: On the thirtieth day of September 1941, there was filed in the office of the Clerk of this Court, a

motion for leave to amplify the record, which said motion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 7500-7501

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

WILLIAM R. JOHNSON, ET AL., DEFENDANTS-APPELLANTS

Motion for leave to file order of the United States District Court amplifying the record

Now comes the United States of America by J. Albert Woll, United States Attorney for the Northern District of Illinois, and respectfully represents to this Court as follows:

1. That the opinion of the Court in the above entitled cause was filed on September 15, 1941, and that this cause is now pending the filing of a petition for rehearing on behalf of the United States on October 8, 1941.

2. That at the time of the preparation of the bill of exceptions in this cause the United States Attorney, having in mind the rules of this Court, agreed to the reduction of the testimony to narrative form, except in such instances as the defendants desired the same set out in question and answer form.

3. That in the opinion of the Court, as filed on September 15th last, it appears that the Court is under the impression that certain statements of the witness Frank J. Clifford were given voluntarily and without a previous question having been asked him.

4. That as a matter of fact in the trial of this cause the witness Clifford did not volunteer any statements and testified to nothing except in response to a question propounded to him by the examiner.

5. That the impression of the Court that he had testified voluntarily has undoubtedly arisen by reason of the fact that the testimony of the witness Clifford had been reduced in the printed record as filed to partially narrative form and to partially question and answer form.

6. That your petitioner did not at any time anticipate that the Court would construe the testimony of the witness Clifford as appearing in the printed bill of exceptions as indicating that the witness had volunteered any of his testimony, and that at no

place in the briefs filed on behalf of the appellants in this cause was any statement made that such had occurred.

7. Wherefore, your petitioner on September 26, 1941, after due notice to the appellants, filed his petition before the Honorable John P. Barnes, the trial judge in this cause, asking that the entire reporter's transcript of the testimony of the witness Frank J. Clifford be certified by the court as a part of the bill of exceptions in this cause, and on September 30, 1941, the said Judge Barnes entered an order certifying the transcript of the complete testimony of the witness Clifford in question and answer form as a part of the bill of exceptions in this cause and directing that the Clerk of the court certify the petition and order, together with the transcript of the testimony of the witness Clifford, to this Court.

Wherefore, your petitioner prays that this Court enter an order permitting the filing of the petition of the United States Attorney, the order of court, and the certified transcript of the complete testimony of the witness Frank J. Clifford as an amplification of the record in this cause.

United States Attorney.

And afterwards, to wit: On the first day of October 1941, there was filed in the office of the Clerk of this Court, a motion that certain orders of the District Court be made part of the record, which said motion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for
the Seventh Circuit

Nos. 7500-7501

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

WILLIAM R. JOHNSON, ET AL., DEFENDANTS-APPELLANTS

Motion for an order directing that the orders of the United States District Court of January 24, 1940, and February 28, 1940, extending the second December 1939 term grand jury, be made a part of the record in this cause and directing the clerk of the United States District Court to certify the same to this court

Now comes the United States of America by J. Albert Woll, United States Attorney for the Northern District of Illinois, and respectfully represents to this Court as follows:

1. That the record on appeal does not show the orders entered by the United States District Court on January 24, 1940, and Feb-

ruary 28, 1940, respectively, extending the second December 1939 Term Grand Jury into the February 1940 and March 1940 Terms, respectively.

2. That in view of the fact that the Court in its opinion in this cause, as rendered on September 15, 1941, has reversed the cause, holding that the order of the United States District Court of February 28, 1940, was void, it is respectfully suggested that both orders of the United States District Court should be a part of the record in this cause.

Wherefore, your petitioner prays that this Court enter an order directing that the orders of the United States District Court entered on January 24, 1940, and February 28, 1940, extending the second December 1939 Term Grand Jury for the Northern District of Illinois, Eastern Division, be made a part of the record in this cause, and directing that the Clerk of the United States District Court certify the same to this Court.

United States Attorney.

And afterwards, to wit: On the fourth day of October 1941, there was filed in the office of the Clerk of this Court, a memorandum in opposition to motion of Government filed on Sept. 30, 1941, which said memorandum is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 7500-7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON ET AL., DEFENDANTS-APPELLANTS

*Memorandum in opposition to Government's motion filed herein
on September 30, 1941*

And now come the appellants, by counsel in cause No. 7501 and file this, their memorandum in opposition to the granting of the prayer of said motion, and as reasons for said opposition respectfully state as follows:

I

The outstanding and important events in connection with these appeals we state to be as follows:

(a) That the judgments of the District Court from which these appeals were taken were rendered by that Court on to wit, October 23, 1940;

(b) That thereafter and on the same date notices of appeal to this Court were filed with the Clerk of said District Court in accordance with the rules of this Court pertaining to appeals in criminal cases;

(c) That thereafter said appeals were perfected in accordance with said notices, and the bill of exceptions in said cause was approved by the District Court on to wit, January 21, 1941;

(d) That thereafter written briefs and arguments and reply briefs were filed by the respective parties in this Court and said appeals were orally argued at length on to wit, May 27, 1941;

(e) That on to wit, September 15, 1941, this Court rendered its opinion in said causes.

It is therefore urged that the District Court was without jurisdiction to enter the order of which a copy is sought to be filed herein.

II

That at no time during any of the proceedings in this Court did the plaintiff herein apply for a diminution of the record nor assert by any motion or suggestion in its brief and argument, or in any other manner, that the record upon which these appeals were predicated failed in any respect to comply with the rules of this Court touching the preparation of records on appeal; nor did counsel for plaintiff at any time criticize the fairness with which the testimony taken at the trial was narrated into the bill of exceptions, which the trial court certified as containing all of the evidence heard at said trial.

III

The effect of the motion now made, if allowed, would be to permit parties who have unsuccessfully litigated a cause to come before this Court and relitigate on some fanciful ground not theretofore presented for the Court's consideration. Such procedure would protract litigation to an extent limited only by counsel's ingenuity.

IV

These appellants deny, that, even if this Court should allow the filing of a stenographic transcript of the testimony of the witness Clifford in question and answer form, it would reveal any substantial difference from the narrative form of that testimony appearing in the printed record.

The testimony of this witness was of such character and of such importance, the narration thereof did not result in its reduction to any appreciable extent.

V

Counsel for plaintiff have not, by their motion or by memorandum in support thereof, pointed out to this Court wherein any part of the printed record of said testimony was inaccurate or that said record failed to fairly and properly convey to the Court the testimony given by the witness.

VI

The motion is an attempt to amend or vary a record in a case that has been fully presented and determined and finds no sanction in any Court Rule or the law of procedure, and proponents of the motion have suggested no authorities justifying the granting of such motion.

JOHN ELLIOTT BYRNE,
EDWARD J. HESS,

Attorneys for Appellants in Cause No. 7501.

JOHN ELLIOTT BYRNE,
105 West Adams Street.

EDWARD J. HESS,
111 West Monroe Street.

(Reservation being hereby made for the filing of further suggestions in opposition by Floyd E. Thompson, Esq., counsel for appellant in cause No. 7500, upon his return to the city October 8, 1941, it being understood that should Mr. Thompson not wish to add to the above, he will so notify the Clerk of this Court.)

And, on the same day, to wit: On the fourth day of October 1941, there was filed in the office of the Clerk of this Court, a memorandum in opposition to motion of Government filed on October 1, 1941, which memorandum is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

Nos. 7500-7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, ET AL., DEFENDANTS-APPELLANTS

*Memorandum in opposition to Government's motion filed herein
on October 1, 1941*

And now come the appellants, by counsel in cause No. 7501, and file this their memorandum in opposition to the granting of

the prayer of said motion, and as reasons for said opposition respectfully state as follows:

I

The orders in question were not offered in evidence at the trial of this cause; therefore, would not be a proper subject of the bill of exceptions.

II

The order entered January 24, 1940, continuing the Grand Jury from the December 1939 term to the February 1940 term was not made the basis of an issue in the case.

III

The verbatim provisions of the order of February 28, 1940, purporting to extend the life of the December 1939 Grand Jury from the February 1940 term to the March 1940 term appears, both at pages 28 and 32, of transcript of record.

IV

The allegations of fact of the plea in the nature of a motion to quash appearing at page 32 of the transcript are admitted by plaintiff's motion to strike appearing at page 43 of the transcript.

V

The order of the District Court appearing at page 45 of the transcript overruling and denying the said pleas and motions without a hearing as to the fact questions tendered, notwithstanding the motion of appellants as appearing at page 44 of the transcript that the plaintiff reply thereto, further evinces an admission on the part of the Government that the order of February 28, 1940, was accurately quoted in the plea and motion hereinabove referred to.

VI

The invalidity of the order of February 28, 1940, as appearing in the transcript of record above referred to, was fully argued by counsel for appellant in case No. 7500 beginning at page 102 of his brief and argument, and by counsel for appellants in case No. 7501 commencing at page 11 of their brief and argument.

Counsel for plaintiff attempted a reply to these arguments commencing at page 106 of their brief and argument, to which counsel for appellant in case No. 7500 replied commencing at

page 25 of his reply brief; and counsel for appellants in case No. 7501 replied in their reply brief commencing at page 3.

Thus it will be seen, not only was it conceded in the District Court by counsel for plaintiff, that the order of February 28, 1940, as appearing in the pre-trial pleadings. (Tr. 28, 32) was a correct copy of said order, but such correctness was projected throughout the entire proceedings in this Court, and there is nothing in the motion now presented to the Court to the effect that the order so quoted was not accurate in all respects.

VII

The motion is an attempt to amend the record of causes which has been fully presented, argued and determined; in fact it is an attempt to alter such a record to make it speak differently from that certified by the District Court. Such motion finds no sanction in law, and no authority is cited by proponent to justify the granting thereof.

JOHN ELLIOTT BYRNE,
EDWARD J. HESS,

Attorneys for Appellants in Cause No. 7501.

JOHN ELLIOTT BYRNE,
105 West Adams Street.

EDWARD J. HESS,
111 West Monroe Street.

(Reservation being hereby made for the filing of further suggestions in opposition by Floyd E. Thompson, Esq., counsel for appellant in cause No. 7500, upon his return to the city October 8, 1941, it being understood that should Mr. Thompson not wish to add to the above, he will so notify the Clerk of this Court.)

And afterwards, to wit: On the seventh day of October 1941, there was filed in the office of the Clerk of this Court, a petition for a rehearing, which said petition for a rehearing is not copied here.

And afterwards, to wit: On the thirteenth day of October 1941, there was filed in the office of the Clerk of this Court, in cause No. 7500, an answer to petition for a rehearing, which said answer is not copied here.

And afterwards, to wit: On the sixteenth day of October 1941, there was filed in the office of the Clerk of this Court, in cause No. 7501, an answer to petition for a rehearing, which said answer is not copied here.

And afterwards, to wit: On the fifth day of November 1941, the following further proceedings were had and entered of record, to wit:

Wednesday, November 5, 1941.

Court met pursuant to adjournment.

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS, ET. AL., DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

It is ordered by the Court that the motion of counsel for appellee for leave to file in this Court the petition of the United States Attorney and the order of the District Court thereon authorizing the inclusion of the testimony of witness Frank J. Clifford as a part of the record on appeal and the certified transcript of the complete testimony of said witness Frank J. Clifford as an amplification of the record in the cause be, and the same is hereby, granted, and the said petition, order thereon, and transcript of testimony are hereby ordered filed in this Court as an amplification of the record in this cause.

It is further ordered by the Court that the motion of counsel for appellee for an order directing that the orders of the said District Court entered on January 24, 1940, and February 28, 1940, extending the Second December 1939 Term Grand Jury, be made a part of the record in this cause, and that the Clerk of the said District Court certify the same to this Court, be, and the same is hereby, denied.

And afterwards, to wit: On the sixth day of November 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court on petition for rehearing, which said opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh
Circuit

October Term and Session, 1941

No. 7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

No. 7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS ET AL., DEFENDANTS-APPELLANTS

On petition for rehearing

November 6, 1941

Before EVANS, SPARKS, and MAJOR, Circuit Judges.

MAJOR, Circuit Judge. In connection with the petition for rehearing, plaintiff has sought and obtained leave to file a transcript of the testimony of the witness Clifford. This was desired because of statements made in the majority opinion that the witness volunteered certain testimony, that he testified in certain instances without a question and perhaps other statements of similar purport. An examination of the transcript of the testimony of this witness discloses that such statements in the majority opinion were erroneously made and that all the testimony given by him was in response to questions.

The majority opinion is therefore modified in this respect so as to reflect the true situation. Such modification, however, does not affect the holding of the majority relative to the erroneous nature of his testimony. After a study of the petition for rehearing, the court is satisfied that there is nothing presented which requires further consideration. Judge Evans adheres to the views expressed in his dissenting opinion. The petition for rehearing is therefore denied.

A true Copy:

Teste:

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

And on the same day, to wit: On the sixth day of November 1941, the following further proceedings were had and entered of record, to wit:

Thursday, November 6, 1941

Court met pursuant to adjournment.

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE
vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE
vs.

JACK SOMMERS ET AL., DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

It is ordered by the Court that the petition for a rehearing of these causes be, and it is hereby, denied.

United States Circuit Court of Appeals for the Seventh Circuit

I, KENNETH J. CARRICK, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages *pages* contain a true copy of the opinion of the Court, the judgments entered thereon, motions relative to amplification of the record, memorandum in opposition thereto, order of November 5, 1941, relative to amplification of the record, opinion of the Court on petition for a rehearing, and order of November 6, 1941, denying petition for a rehearing, in the following entitled appeals: 7500, The United States of America, Plaintiff-appellee vs. William R. Johnson, Defendant-appellant; 7501, The United States of America, Plaintiff-Appellee vs. Jack Sommers et al., Defendant-appellants, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this third day of December A. D. 1941.

[SEAL]

KENNETH J. CARRICK,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

Supreme Court of the United States

No. 799, October Term, 1941

Order allowing certiorari

Filed February 2, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Murphy and Mr. Justice Jackson took no part in the consideration and decision of this application.

Supreme Court of the United States

No. 800, October Term, 1941

Order allowing certiorari

Filed February 2, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Murphy and Mr. Justice Jackson took no part in the consideration and decision of this application.

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

Case No. 1944

No. 1944

THE UNITED STATES OF AMERICA, PETITIONER

WILLIAM E. JOHNSON

No. 1945

THE UNITED STATES OF AMERICA, PETITIONER

JACK CONNORS, JAMES A. HARTIGAN, JOHN M.
FLANAGAN, ET AL.

ON WRIT OF HABEAS CORPUS IN THE UNITED STATES CIRCUIT
COURT IN DISTRICT OF THE SOUTHERN CIRCUIT

RECEIVED FOR RECORDING FILED DECEMBER 19, 1941
RECORDED JANUARY 2, 1942

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 7500 *vs.*

WILLIAM R. JOHNSON,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 7501 *vs.*

JACK SOMMERS, ET AL.,
Defendants-Appellants.

Appeal from the District Court of the United States for the
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1 And on, to wit, the 21st day of January, A. D. 1941,
came the defendants by their attorneys and filed in the
Clerk's office of said Court Bill of Exceptions in words and
figuers following, to wit:

2 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

United States of America, <i>Plaintiff-Appellee,</i> <i>vs.</i>	} No. 32168.
William R. Johnson, Jack Som-	
mers, John M. Flanagan, James	
A. Hartigan, William P. Kelly, and Stuart Solomon Brown, <i>Defendants-Appellants.</i>	

BILL OF EXCEPTIONS.

(Rule IX—Criminal Procedure.)

Be It Remembered that heretofore on to-wit, August 27,
1940, and from day to day thereafter until the conclusion of
the trial of the above-entitled cause, the following evidence
was admitted and proceedings had:

3 Opening Statements.

Mr. Hurley made the opening statement for the Govern-
ment and, after reviewing the indictment in a general way,
related what he expected the evidence to show on behalf of
the Government.

Mr. Hess (Excerpts from opening statement on behalf
of certain defendants):

Mr. Callaghan and I represent the defendants (except
Mr. Johnson) frequently referred to as "aiders."

With regard to Sommers, Creighton, Hartigan, Flan-
agan, Kelly and Mackay, as you have already heard here
about gambling going on, we concede they were operating
gambling clubs, and the evidence will show it. We con-
cede that it was their business and that they operated at

one point or another at some time or another during the years 1936 to 1939.

The evidence will not show that these twenty-two places that Mr. Hurley recited to you were being operated at one time or with any particular regularity. There was an operation at one point and then that would be closed for reasons that I do not have to tell you. This line of business is pushed around. Then they would move to some other club, . . . and as to the list of clubs referred to by the Government, these men operated some of them at some time; not all of them. Some of the clubs mentioned, we don't think there is any evidence, or we don't know of any, at least, that we had anything to do with them.

4 Now this is true of these gentlemen, and when I say that they operated gambling clubs, that wipes out everything that was said by the Government in its opening statement with respect to detail,—the names of the men working in there, the kind of game, the door man, and all of those details that go into the operation of a gambling club went into the operation of most of these gambling clubs.

So we will have no controversy about any of that feature of the case, but as you have been informed by the Court and by Judge Thompson and Mr. Hurley in their examination of you to serve as jurors, the question here is income tax, and not whether we operated a gambling house; we concede right here that we did operate them. . . .

I am not speaking for Mr. Johnson. . . .

5 You have heard what the Government expects to show with respect to banking and currency exchange facilities. There will be no question about any of that. Wherever the records show that any of my clients cashed any checks or exchanged currency, that is the fact. We did exchange currency and we did cash checks. . . .

The help, the evidence will show, in this line of business is a little different, slightly different, at least. They are paid every night. . . . Whether it is the night crew or the day crew.

6 Excerpts from Opening Statement of Mr. Thompson.

We have had outlined by the United States attorneys what they expect to prove. Most of my information about this case has come to me this morning when the United States attorney told what they expected to prove. I first

met Mr. Johnson just a few days ago and I was hired Monday afternoon to represent him in this trial which started Tuesday morning as you know.

Mr. Hurley: I object to anything like this as an opening statement.

The Court: Sustained.

7 The question in this case, as is obvious from the statement of the Government, is, first, whether or not Mr. Johnson has had an income larger than that which he has reported to the Government. The source of that income is altogether immaterial. That is the first question. The second question is,—Mr. Hurley stated that the second proposition and the one on which they base their case is that Mr. Johnson owned this great string of clubs in which gambling took place and that the income of these gambling houses was Mr. Johnson's income. • • •

Now, our proof will be that Mr. Johnson does not own any one of these clubs; that the income from these clubs is not his income. That is the defense. • • •

Now, we will prove this about Mr. Johnson. He was born and reared in Chicago. He has been a gambler all his life. He started shooting craps and playing marbles for keeps when he was twelve or thirteen years old and he has been doing it ever since, he has been shooting craps ever since. He is forty-five years old. He sits there at the end of the table, with a dark suit on, gray haired, forty-five years old, unmarried; lives with his mother here in Chicago and out on the farm in DuPage County; never has done anything else but gamble; that is his business.

He has made a lot of money. We will prove he has got the reputation of being a square gambler and that where-

8 craps that the game is on the square. We will prove that very often a gambling house in this town is referred to as a Bill Johnson gambling house because the gambling house is on the square and is a place where Bill Johnson plays and he won't play where the gambling house is not on the square. • • •

We will prove that Mr. Johnson had absolutely nothing to do with this currency exchange, had no interest in it whatever, he never cashed a check there, he never exchanged money there, he never bought a money order there, he never received a dime of income from the place.

Mr. Johnson owned either the building or an interest in the building. It was an old bank building that went broke

when banks went broke in this town. It was put on the market to be sold by the receiver. Mr. Johnson either by himself or as partner with somebody bought this building as an investment. It was there being operated. The safety deposit boxes were being rented and operated for the convenience of the people in the neighborhood and for others.

We will prove that there was a woman there in charge of these safety deposit boxes and as Mr. Brown's attorney, Mr. Hess, has said, that this building was rented by the currency exchange for fifty dollars a month, I think it was. The money was going to the agent who had charge of the building and being spent for any expenses to maintain the building. Mr. Johnson got no income from this building at all, but Mr. Johnson did own the building, that it did pay an income and that it did return a net result, the Government says in this indictment. * * *

We are going to prove that Mr. Johnson had no knowledge whatever of this so-called destruction of books, he doesn't know anything about it, he had no interest in them, had no connection with them and, therefore, no part of them is his affair.

9 There was a lot said about the Bon Air Country Club and Mr. Hess has already described to you in sufficient detail at this time that that was a big country club, golf course and all that and it is now a big roadhouse with facilities for the accommodation of the public just like hundreds of other roadhouses in the country. There is gambling goes on there occasionally, probably, like in other roadhouses.

Now Mr. Johnson is interested in that property. Mr. Johnson is a stockholder in the catering company as well as three or four other people. The books will explain just who the stockholders are. He owns, as I remember, about a fourth interest, about a fourth of the company. Mr. Johnson is also a part owner of the real estate itself, which is rented to the catering company on a percentage basis, just like many other rental contracts are and the catering company as a corporation has made its returns, it has never paid a dividend and, therefore, Mr. Johnson never had any income from it, but the catering company has made its returns at all times.

The property, the real estate which is leased to the catering company has several owners. I don't know who the owners are now, maybe only two owners, but anyway Mr. Johnson is a part owner of the property. All those facts will come out.

- 10 HELEN J. NORTON, a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I am chief of the income tax assessment list in the office of the Collector of Internal Revenue at Chicago, Illinois. The First Collection District includes Cook County, and persons residing therein file their returns in Chicago. I have charge of the records and files pertaining to the filing of income tax returns in the First District of Illinois, and I am in charge of the income tax assessment list.

Government's Exhibit R-6 for identification was filed in the office of the Collector in Chicago. The stamp in green letters "March 15, 1933," appearing on the document indicates the date the return was received in the Collector's office. The stamp in the upper right-hand corner of the exhibit indicates the receipt of payment of part of the tax on March 17, 1933. There is also a deposit stamp showing the date the money for payment is sent to the bank. The stamp on the upper lefthand corner of the exhibit "Computation proved," indicates that the comptometer operator has proved the computation on the face of the return. Also appearing on the exhibit in the upper righthand corner in blue figures is the payment itself. The assigned serial number 817210 also appears. Also, on the exhibit are the red check marks of the comptometer operator. The red circle appearing in the lower right-hand corner of the exhibit is placed there by the auditor showing the tax to be assessed.

- 11 Government's Exhibit R-7 for identification is a return filed in the office of the Collector at Chicago, March 15, 1934.

Government's Exhibit R-8 for identification is a return filed in the office of the Collector in Chicago, March 15, 1935.

Government's Exhibit R-9 for identification is a return filed in the office of the Collector at Chicago on March 16, 1936.

Government's Exhibit R-10 for identification is a return filed in the office of the Collector in Chicago on March 15, 1937.

Government's Exhibit R-11 for identification is a return received by the Collector's office on March 15, 1938.

Government's Exhibit R-12 for identification is a return

filed in the office of the Collector in Chicago on March 15, 1939.

Government's Exhibit R-13 for identification is a return filed in the office of the Collector in Chicago and received on March 15, 1940.

The document shown me identified as Government's Exhibits R-6 to R-13, inclusive, are the returns of William R. Johnson for the years 1932 to 1939, inclusive. As a result of a personal search and examination of the files in the office of the Collector of Internal Revenue in Chicago, which I made, I can say that these returns are the only income tax returns filed by the defendant, William R. Johnson, for the period.

Government's Exhibits R-86 to R-106, inclusive, for 12 identification are certified copies of records in the office of the Collector at Chicago known as the income tax assessment list. The entries on the assessment list are taken in some cases from the entry made from the original return, in some cases from a revenue agent's report showing a deficiency, and in other cases the entry is made on the assessment list by the Commissioner of Internal Revenue indicating a deficiency.

I have made a personal examination of the records of the office of the Collector at Chicago to determine how much income tax was paid by William R. Johnson during the year 1932.

The Court: This is for the purpose of showing expenditures by the defendant?

Mr. Hurlev: Right; moneys paid during 1932 into the Collector's office.

Mr. Thompson: We object on the ground that there is nothing in the indictment or bill of particulars to which this relates and it is immaterial.

The Court: Objection overruled.

The Witness: There was a payment of \$596.03 made April 2, 1932, and a payment of \$786.00 made July 19, 1932. There was income tax paid in four equal installments: March 15th, June 8th, September 7th and December 13, 1932, totalling \$7,576.64. The amount of income tax paid by William R. Johnson in 1933 was \$8,610.10.

For the year 1934 the amount of income tax paid by Johnson was \$17,767.15, and there is a payment here, tax, penalty and interest, totalling \$11,808.08 made during 1934.

13 During the year 1935 Johnson paid income tax in four equal installments totalling \$40,464.13, and also an additional tax of \$909.43.

In 1936, the amount of income tax paid by Johnson in four equal installments was \$11,029.79, and also an additional tax of \$9,032.45.

The income tax paid by Johnson in 1937 consisted of one payment of \$4,686.83, four equal installments totalling \$71,915.35; also \$1,223.59; and \$724.93.

In 1938 William R. Johnson paid income tax in the sum of \$128,399.72.

In 1939 William R. Johnson paid income tax of \$34,530.94. These were all the income taxes paid by William R. Johnson during the years 1933 to 1939, inclusive.

The various entries made on the documents which I examined in the office of the Collector of Internal Revenue in Chicago were made in the ordinary course of business, and at or about the time the transaction took place, and kept under my supervision and direction.

Cross-Examination by Mr. Thompson.

The records which I have identified today show that the income tax of William R. Johnson for the year 1932 was audited, and all the tax that was demanded of him up to that date has been paid. I do not know who audited the returns. The notation "audited by E:AJ 1936" is put
14 on there by a revenue agent, but I do not know who it is. Any records which would show whose initials these are would be in Washington in the office of the Commissioner of Internal Revenue. The report is on file.

Referring to Government's Exhibit R-7, being the income tax return of Johnson for 1933 filed in 1934, Schedule A indicates the kind of business engaged in as "miscellaneous betting commissions and gambling." This return was audited in due course by an agent of the Department with the result that a deficiency was assessed in 1935. This deficiency was paid by Johnson September 19, 1935. All the taxes which have been assessed up to date against Johnson for the year 1933 have been paid by him.

With regard to Government's Exhibit R-8, being the return for the year 1934, the net income is shown thereon as \$134,811.46. This is designated as "miscellaneous speculative income." This return was audited by agents of the Department and a deficiency was assessed in October, 1936,

and was paid together with interest on November 16, 1936. I can state that it was paid from the certified copies of the assessment list identified as Government's Exhibit R-99. I do not know who audited that return.

Referring to Government's Exhibit R-9, being the return for the year 1935 filed on March 16, 1936, a deficiency was assessed in November, 1937. From the name appearing on the stamp, "J. T. Blocker" made the audit. The deficiency tax together with interest was paid December 21, 1937.

15 Referring to Government's Exhibit R-10, being Johnson's return for the calendar year 1936, the original amount returned for tax was \$71,915.35. This return was audited apparently by J. T. Blocker.

On the re-audit of Mr. Johnson's return for the year 1936, Johnson paid the deficiency together with interest on December 21, 1937.

Another 1936 assessment appears on our records. I am referring to Government's Exhibit R-106 which is a jeopardy assessment. The amount outstanding is \$526,967.26. The \$836.75 appearing as a credit is a payment which was made June 15, 1940.

A jeopardy assessment is an assessment of income tax made under Section 273 of the Revenue Act which provides immediate assessment of the income tax. There is also a jeopardy assessment against Johnson for the year 1937 and the year 1938. I do not have a jeopardy assessment among these papers for Johnson for the year 1939. The records which I have do not show any claim for some \$33,000.00 and an acceptance of \$11,000.00 in settlement of that claim. If it was a claim that appeared for these years, it

would appear on the assessment list which I have now,
16 and there is no record on the assessment list indicating any claim for these years. I have a payment here of \$11,808.08 made December 14, 1934, which appears on Government's Exhibit R-95 which is a deficiency, a tax for the year 1931 which was assessed in addition to the regular return. The amount of the tax was \$9,738.90. There was penalty and interest due thereon. It was an assessment and was paid.

Mr. Hurley: At this time, if the Court please, I will offer in evidence GOVERNMENT'S EXHIBIT, for identification, R-6-13, inclusive, and R-86-106, inclusive.

Mr. Thompson: We object to those exhibits which are of periods prior to 1936, because the year 1936 is the first

year covered in the indictment or in the bill of particulars; and we also object to the receiving of these documents on the theory suggested by the United States Attorney, that is, he was showing what was spent during the years '32 to '35, inclusive, except that he should go back and show the income of the years prior thereto. If he purports to make an audit of Mr. Johnson's income and expenditures he has got no right to start with 1932. He should go all the way back.

The Court: Overruled.

Mr. Callaghan: Your Honor, I want to add to my associate's objection, and make the additional objections on behalf of our defendants, that these income tax returns on William R. Johnson are not binding in any way upon our defendants at this stage of the proceeding.

17 The Court: Proceed.

Mr. Hurley: They may not be at this time. I think, if the Court please, if the evidence goes in, then it will. At least I want to make that reservation at this time until I shall connect it.

The Court: You propose to connect them up?

Mr. Hurley: Yes.

The Court: They may be received.

Mr. Callaghan: Subject to the objection. May it be understood, if Your Honor please, that we need not repeat objections of other counsel, these various objections; and that we need not take an exception to each ruling of the Court?

The Court: All I require is that I know I am ruling on something. If I know I am ruling on something, then you may assign an error on any ruling I make.

Mr. Hurley: However, they are at this time against the defendant Johnson. This objection only goes to the other defendants.

The Court: What is that?

Mr. Hurley: This objection only goes to the other defendants.

The Court: Yes.

Mr. Hurley: Yes, they are admissible against the defendant Johnson.

The Court: You may preserve an exception to any ruling to which you call my attention.

18 The Court: Yes. These exhibits are admissible against Mr. Johnson at this time. As to the other de-

fendants, they are admitted subject to your promise to connect them up.

(Said documents so offered and received in evidence were marked as GOVERNMENT'S EXHIBITS R-6 to 13, and R-86 to 106.)

LEWIS H. WILSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Lewis H. Wilson; I live at Chicago, Illinois. I am an Internal Revenue Agent stationed at Chicago, Illinois, for the past twenty-two years and two months.

I did not in the month of December, 1931, have a talk with a man named William R. Johnson; I did a little bit later pertaining to that date. A conversation was had on January 26, 1934. I do see the man in the court room that I had the talk with. (Indicating the defendant, William R. Johnson). Revenue Agent, John T. Blocker, was present. The place was in my office, Room 426, this building.

Q. Now, will you state what your conversation with Mr. Johnson was at that time?

A. In relation to a protest that he had filed.

19 Mr. Hess: This is not binding on us.

The Court: Do you promise to connect this up?

Mr. Hess: It is not binding on us, conversation with him.

Mr. Hurley: I would say let it go in as against the defendant Johnson unless it is later connected up.

The Court: Well, it may be received as against the defendant Johnson.

The Witness: I asked him how much he had on December 31, 1931. He said he had his bank roll of \$10,000.00 and \$68,000.00 in accumulated gambling profits in the safety deposit box. He said that all the money in the box was gambling profits. He kept all his gambling profits in his box; not in his bank, he told me. He said it was in the form of currency. We discussed several adjustments made on examination of his income tax return for 1931, particularly in relation to currency, and he told me at that time what he had on December 31, 1931.

Mr. Thompson: I move to strike this testimony as having no bearing on the issues made by the indictment and is not covered by the matter stated in the bill of particulars.

The Court: Denied.

Thereupon the Government offered and there was received in evidence GOVERNMENT'S EXHIBIT O-1 purporting to be a map of Cook County, to which an objection was interposed to the written information appearing on the map, which objection was overruled.

FRANK M. JIRACEK, called as a witness on behalf of the government, having been first duly sworn, was examined, and after testifying, on motion of Mr. Thompson, the testimony of the witness was stricken.

FRANK J. ZIMANZL, called as a witness on behalf of the Government, having been first duly sworn, and after testifying, on motion of Mr. Thompson, the testimony of this witness was stricken from the record.

SAMUEL C. TAVALIN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

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Direct Examination by Mr. Miller.

My business is real estate mortgages; I have been so engaged for over fifteen years. I have been president of the General Mortgage Investments since 1928. I have known the defendant, William R. Johnson, about twenty-five years. I have had business transactions with him. My first business transaction was in 1925. I was one of the members of a syndicate that had acquired some real estate. The members of the syndicate were Leo Glazer, Samuel Robin, Leo Fields, William R. Johnson, Jack Wolf, Julius Anixter, Lewis Stryker and myself. The syndicate was interested in the Northeast corner of Dearborn and Division, known as 1209 North Dearborn Street,—1201 to '09, possibly '13. It is a three-story commercial building, stores, offices, and apartments and lodge halls. In the latter part of 1933, we sold out to Mr. Johnson. There were

considerable negotiations as to the amount, the sale price for the equities, and I believe it was agreed to be approximately \$16,000.00 which Mr. Johnson paid for the interest of all the other members of the syndicate. It seems to me that the title to that piece of property at the time of sale was in the name of the Foreman Bank as trustee. I handled the transaction whereby Mr. Johnson acquired title to that building. I received payment of the \$16,000.00, that I mentioned, from Mr. Johnson. There was a first and second mortgage on the property at that time amounting to approximately \$200,000.00. I think that at that 22 time the balance due on the first mortgage was about \$160,000.00; that was about December, 1933. I think the first mortgage was made with the Penn Mutual Life Insurance Company. I handled part of the negotiations for that loan and signed the mortgage. The co-signer of that mortgage obligation was Samuel Robin. At the time of the acquisition of title to this property by the defendant Johnson, there was an agreement made with regard to the then existing mortgages, both the first and second mortgage. I don't recall the conversation; the result was that the mortgage was paid off. I had no conversation with the defendant Johnson as to the payment of the first mortgage. There was a general conversation as to the second mortgage; it was at my office. Everybody in interest, at some time or other in the conversation, was present; by "every" I mean all these people just mentioned that were part of this syndicate. The defendant Johnson may have been present at that time. I did have a conversation with Johnson in my office with regard to the payment of the second mortgage in the latter part of 1933. It was before Mr. Johnson acquired title to the property. I don't remember what the conversation was or where it took place or who was there.

The Court: What is your best recollection as to where it took place?

The Witness: Well, it was in my office. I can't tie up any one conversation, your Honor; negotiations were pending over a period of several months before it was disposed of. The amount of the second mortgage that we owned was paid off at a slight discount by the defendant, William R.

Johnson. It was paid at my office to me. I don't recall 23 the exact amount; my office had part of the second mortgage, and other members of the syndicate owned

part of it. My office held about seventeen or eighteen thousand dollars; the total principal amount of the mortgage was \$45,000.00. Some of the balance of the notes were held by Mr. Johnson, Mr. Robin and Mr. Anixter. I don't recall how much these various people held. Mr. Johnson paid us about seventeen thousand dollars which was the amount due us according to our records. We may have accepted payment for some of the other members of the syndicate.

I have seen Government's Exhibit E-9 for identification before; they are general records of our office and reflect the transaction that I have just been discussing.

Q. Can you from this exhibit refresh your recollection as to how much was paid you on your own behalf or for anyone else?

A. It would take a little time to analyze this. It is not broken up that way. It does refresh my recollection of what happened in connection with this transaction. I don't remember how much was paid to me by Johnson for everybody; that does not help me. It was the amount of the second mortgage less the amount of notes that were not deposited with us. That amount may be \$15,000.00. The notes not deposited with us were possibly the notes owned by Mr. Johnson. I do know that Mr. Johnson had previous to this time acquired about \$13,000.00 in notes secured by this second mortgage. In round figures my testimony means that he paid me \$45,000.00, less \$13,000.00. The amount of \$32,000.00 would be approximately correct if all the notes were deposited with us.

24 Q. Did you examine Government's Exhibit E-9 carefully, Mr. Tavalin? Would that show the disposition of all of the notes secured by the second mortgage?

A. It shows a good many of them. I would have to check them out. They are forty-five and some odd notes. I do not see any of the last numbers on here. It is a fact that to my best recollection, Mr. Johnson paid for all of the notes other than the ones that he held himself.

(Witness examines Government's Exhibit E-9.) Number 3 indicates it was held by Mr. Johnson, amounting to \$5,000.00; 4, 5 and 6 were owned by Mr. Johnson personally. This sheet does not show the amounts.

I was agent of the building at 1201-09 North Dearborn Street after Johnson acquired title. As agent I collected

rents and leased vacant space; operated the property and rendered monthly statements to Mr. Johnson. I have been acting as agent performing those duties since January of 1934. I was employed in that capacity by Mr. Johnson and make reports to him every month.

I know the defendant, William Kelly. I had a business transaction with him in my office. Mr. Kelly inquired about the vacant lodge hall space that we had. There were some negotiations about the amount of the rent and it was finally determined. They were the usual negotiations when a prospective tenant leases space. I did lease premises in that building to Mr. Kelly; it was, I think, either in 1936 or 1937. The record will show that. I charged him \$450.00 a month; there was no lease made. It was an arrangement for the use of the space; no written lease.

25 Exhibits E-15, 16, 17, 18, 19 and 20 are monthly rental reports rendered by my office to Mr. Johnson. They are part of the original records of my office. It appears that I first rented the premises to the defendant Kelly about September of 1936. Relying on the record, I recall that about September, 1936, I made this arrangement with the defendant Kelly. The arrangement was \$450.00 a month and he does his own decorating and repairs or whatever is necessary. I don't recall whether I made similar arrangements with anyone else in the building. I did confer with Mr. Johnson in relation to this arrangement with the defendant Kelly; that was prior to turning over of possession. I advised Mr. Johnson that I had an inquiry from a Mr. Kelly and that Mr. Kelly indicated Mr. Johnson knew him, and I asked if it would be satisfactory to let him have the space. I may have told Mr. Johnson at that time that I did not have a lease for this tenant. I do not recall that Mr. Johnson said anything about that. Mr. Kelly took possession of the premises in 1936. It was the second floor loft at the north end of the building.

Q. One room?

A. Well, there may have been some other rooms. We gave it to him as is; we call it the lodge hall space. It was approximately 50 by about 120 or somewhere about that. I don't recall discussing any other space which the defendant Kelly was permitted to use under that same arrangement. I think the defendant Kelly used other portions of the premises subsequent to September, 1936. After the

first arrangement was made for the lodge hall, he used basement space. It is located in the same part of the building with the exception that it is in the basement rather than on the second floor. It was about 50 by 26 120; no additional rent was paid for that room.

I made a second mortgage on the property under date of July 15, 1932; the principal amount was \$45,000.00. There were twenty-one notes issued and secured by that mortgage; six notes of \$5,000.00 each, and fifteen of \$1,000.00 each. On December 20, 1933, at the time Johnson acquired title to this property, he held \$15,000.00 in second mortgage notes. At that time Johnson acquired the balance of the notes; he acquired the \$15,000.00 in notes during the years 1932 and 1933.

I had nothing to do with the first mortgage in the sum of \$160,000.00 after Johnson acquired title. I do not think I made any payments of interest or principal on account of the first mortgage; my recollection is that I did not.

I have seen Government's Exhibit E-15-A. It is a copy of the original statement of receipts and disbursements of the property at Dearborn and Division Streets for the year beginning February 1, 1935; these are carbons of the originals. The originals were forwarded to the owner, Johnson, the defendant in this case. To the best of my knowledge, Government's Exhibit E-15-A is a true and correct record of the transactions kept in the usual ordinary course of business and part of the permanent records of my company at the present time.

Exhibit E-15-A for identification is a duplicate of the original record of the receipts and disbursements for the property at Dearborn and Division Streets owned by Mr.

Johnson, for the year January, 1934, to December 31, 27 1934. I forwarded the original of this record to Mr.

Johnson. This record is part of our permanent records kept in the usual ordinary course of business, and the entries made thereon are accurate, to the best of my knowledge, and reflect the transactions on or about the date they occurred.

I have seen Government's Exhibit E-17 for identification before. It is a statement of receipts and disbursements for the year 1936 and it is a duplicate of the original records which were forwarded to Mr. Johnson, and they are part of our permanent records kept in the ordinary course of business and accurately reflect the transactions recorded thereon on or about the time they occurred.

I have seen Government's Exhibit E-18 for identification before. They are the records of the receipts and disbursements for the year 1937 for the property at Dearborn and Division Streets, and are duplicates of the original records which were forwarded to Johnson. They are part of the permanent records of our company and kept in the usual course of business, and the transactions reflected thereon are an accurate record of the same had at about the time they occurred.

I have seen Government's Exhibit E-19 for identification before; it is a copy of the original records of the receipts and disbursements for the property at Dearborn and Division Streets for the year 1938 and are duplicates of the original records; the originals were forwarded to Mr. Johnson. They are a part of our permanent records made in the usual and ordinary course of business, and accurately reflect the transactions stated thereon at or about the time they occurred.

I have seen Government's Exhibit E-20 for identification before. It is a copy of the original records of the receipts and disbursements for the property at Dearborn and Division Streets, beginning January, 1939. It is a duplicate set of our records; the originals were forwarded to Mr. Johnson. They are a part of the permanent records of our company made in the usual and ordinary course of business, and accurately reflect the transactions stated thereon at or about the time they were made.

I know the defendant, William P. Kelly. He occupied the second floor space at the north end of the building facing Dearborn Street, known as the lodge hall, the basement in the same building immediately below the restaurant and a small store at 1203 North Dearborn Street. The store was included in the rent paid for the other space. This store is somewhere between 11 by 15 or 20; it was a cigar store. The defendant Kelly occupied that space the last couple of years. The 1938 records indicate that he occupied that space. When he started it, I can't tell without a detailed check. The street number of the store was 1205; there was no other portion of the premises occupied by Kelly. The defendant Kelly usually brought the rent into the office; there were some delinquencies from time to time—he was in arrears at times. At one time it was about three months, I recall, and another time four months. I am not certain of that, however, without referring to the records. I did not state in what year he was in arrears.

I can refresh my recollection from examining Government's Exhibit E-18 as to the amount the defendant
29 Kelly was in arrears. It was \$1800.00; I did not collect it; the amount of rent was waived. I talked to the defendant Johnson about the arrearage in rent at about the time the arrears occurred; I don't remember the exact words. It was about the time Mr. Kelly started to pay rent again and Kelly said he wanted to start to pay rent, but he couldn't pay up the arrears. This is what I told Johnson. He wanted to know if that would be acceptable; then, there was a general discussion, but the final decision was to let him go ahead. I think Kelly paid maybe \$100.00 on the arrears; it seemed that the record indicated a hundred dollar settlement. I can refresh my recollection from the records; it was settled for a hundred dollars. Relying on the records, I have a recollection of making that settlement.

The defendant Kelly was again in arrears in his rent subsequent to the year 1937. I can't state when and in what amount from memory. I can refresh my recollection from Government's Exhibit E-20. He was in arrears \$1300.00.

The Court: Have you any independent recollection of that transaction?

A. I do not have an independent recollection of that transaction only that he was in arrears \$1300.00. I know that from the records. I know he was in arrears several times; by several I mean two or three. I would be guessing as to when they were. When he started paying again, he couldn't pay up the arrears. He only paid current rent.

I discussed the matter with Mr. Johnson. He said, "Well, if he can't pay up, leave it go."

Mr. Miller: Q. Did he again become in arrears in the payment of his rent after this last time that you have
30 just testified to?

A. Yes, sir. That was in 1940; the latter part of 1939, I think. It was several thousand dollars; I would have to refer to the records. I have no recollection of how much over two thousand dollars. I can refresh my recollection from Government's Exhibit E-20. My refreshed recollection about that is \$1305.00. Two thousand dollars was not the last one; that was the last one I looked at now, \$1305.00. Before I was talking about a later delinquency. The amount of \$1305.00 was not paid by the defendant Kelly; it was waived.

I talked to defendant Johnson about that—just about the time that Mr. Kelly started to pay rent again. It was the same like the first default—couldn't pay. I asked him what to do about the arrears in rent; Mr. Kelly said he couldn't pay it. There was some discussion about the possibility of renting the space, or something. Then, because of the impossibility of getting a new tenant, he decided to waive it; Johnson told me to waive it. I can refresh my recollection from examining Government's Exhibit E-20 as to a further arrearage on the part of the defendant Kelly. In December of 1939 it was \$3150.00 accrued and owed by the defendant Kelly; nothing was done about that. I have tried to collect it from Kelly; I have asked him about it. I didn't start any proceedings to collect it. Whenever he was delinquent, he promised to pay as soon as he could.

I talked to defendant Johnson about the \$3150.00 arrearage, in general, not at that particular time in December of 1939. I had a talk with defendant Johnson in December of 1939 about payment or collection of the \$3150.00 from defendant Kelly. We have had several discussions about it—some talk about trying to get a new tenant for the space. It may have been in November or December 31 of 1939 when I asked Johnson about those arrears, if there was anything I was expected to do about it. He didn't think there was any use of taking any action, because he did not think we could collect. That was the substance of Mr. Johnson's opinion as stated to me.

The defendant Kelly is a tenant in default in the building at 1205 North Dearborn Street. I don't know what I would call him. We are looking for a new tenant. The building custodian, the janitor, is in possession of the premises now, formerly occupied by the defendant Kelly.

I don't think there is any equipment in the premises; I have not been in the premises occupied by the defendant Kelly. I have been in the premises; the last time was about a year or so ago. There was a lot of furniture, chairs, tables and equipment referred to as gambling paraphernalia in the premises the last time I was there. That equipment was on the second floor—that part of the premises designated as the lodge hall.

I was in the basement and the cigar store occupied by the defendant Kelly; the last time, I would say, was about a year or so ago. It was vacant at the time; I don't recall

anything being in the room. I have been in the basement premises when there was something in that room. At that time there were tables and chairs. There were some writings on the walls, on the north walls, cardboards and so forth; the usual type that they have reports from horse race results, racing results.

I do not have the keys to the premises occupied by the defendant Kelly; the caretaker of the premises has them; I would not know if Kelly has any keys; maybe he has.

I would say that the tenancy is terminated. I do not know if Kelly still has the keys or not. I ordinarily take back the keys from tenants whose tenancy has been terminated.

I do not handle any other matters for the defendant, William R. Johnson.

I know the premises located at Thorndale and Glenwood Avenues in Chicago. I managed the premises for Mr. Johnson.

I have seen Government's Exhibit E-22 for identification before. They are reports of the receipts and disbursements for the apartment building located at 1356 Thorndale Avenue, the corner of Glenwood, for the year beginning December 1, 1935, and ending January 31, 1936. They are duplicates of our original records; the originals were forwarded to Mr. Johnson. These records are kept by our company in the usual ordinary course of business. They accurately reflect the transactions stated thereon at or about the time they occurred.

I have seen Government's Exhibit E-23 for identification before. It is a report of the receipts and disbursements for the property at 1356 and 58 Thorndale, the corner of Glenwood, for the period beginning January 31st, 1936, and ending December 31, 1936. They are statements of receipts and disbursements, and are duplicates of the original records which were forwarded to Mr. Johnson. Those records are kept in the usual ordinary course of business and they accurately reflect the transactions stated thereon at or about the time they occurred, subject to typographical errors.

I have seen Government's Exhibit E-24 for identification before. It is a statement of receipts and disbursements for the property at 1356 Thorndale Avenue, for the period beginning January 1, 1937, and ending December 31, 1937. They are duplicates of our original

records which were forwarded to Mr. Johnson. These records were kept in the usual and ordinary course of our business and they accurately reflect the transactions stated thereon at or about the time they occurred.

Government's Exhibit E-25 for identification is a report of receipts and disbursements for the apartment building located at 1356 Thorndale Avenue, at the corner of Glenwood, for the period beginning January 1, 1938, and ending December 31, 1938. They are duplicates of the original records; the original records having been forwarded to Mr. Johnson. These records were kept in the usual and ordinary course of business and accurately reflect the transactions stated thereon at or about the time they occurred.

Government's Exhibit E-26 for identification is a copy of a report of receipts and disbursements for the apartment building at 1356-58 Thorndale Avenue, corner of Glenwood, for the period beginning January, 1939, and ending February, 1939.

(Thereupon Mr. Thompson stated that he will admit that the witness will answer the qualifying questions the same as he has answered all the others.)

I see the defendant, William R. Johnson, in the court room, the man that is now standing up.

When Mr. Kelly, the defendant, paid rent to me, it was sometimes in cash and sometimes by check; I am not certain about that.

I have seen Government's Exhibit E-7 for identification before. It bears my signature. I have heard of
34 the Harlem Stables; I know of it. I think I have been there; it is on Harlem Avenue near Irving Park Boulevard. The purpose of my visit there was for recreation and to try and win some money in the slot machines. I did not play anything but the slot machines. There were a lot of people there, tables, gambling paraphernalia; tables they play dice on, roulette. There may have been something else; I did not pay any particular attention. I imagine I did see someone there that I knew. There were a lot of people there that I knew; I saw Mr. Johnson there. I don't recall seeing anybody else that may have been there. I think I visited the Harlem Stables two or three times in all. I don't think Mr. Johnson was there at each occasion. I just visited around, spent a little time and went away. I saw a lot of people that I knew,

friends. I may have seen some of the people in this court room there; I am not absolutely certain. I may have seen the gentleman at the end there. (Indicating the defendant, James A. Hartigan.) I talked to the defendant Johnson on the occasion of my visit to the Harlem Stables when he was there. The conversation was, "Hello" and "How are you" and "How is business," the usual conversation. There may have been something pertaining to the building; I don't recall offhand. I don't think I met him there by appointment. When I saw Mr. Johnson at the Harlem Stables, he was standing around talking to people.

The space occupied by the defendant Kelly was vacant for a year prior to his occupancy. There was typical lodge hall equipment on the second floor and the basement when they were occupied. The lodge hall equipment was removed when the lodge vacated the premises. I think it

35 was in 1934 or 1935, but our records will show that, I think. My best recollection is that it was vacant for about a year. The cigar store occupied by the defendant Kelly was vacant for about six months or a year, prior to Kelly being in those premises. Prior to the vacancy there was a lingerie shop or beauty parlor. Prior to the time Kelly occupied the premises, people had been in the building accused of gambling. They occupied the basement space under the Division Street stores. I was manager of the building at that time; I was managing the building for Mr. Johnson. I don't recall who occupied the premises just described.

Cross-Examination by Mr. Thompson.

I have lived in Chicago thirty-four years. During that period I have been in the real estate investment business over fifteen years. General Mortgage Investments is a corporation. I have been connected with that concern since 1928; I am president and principal owner of it. I transact all my business through the corporation. This corporation not only deals in mortgages, but also manages properties. We have close to forty employees. My business address is 33 North LaSalle Street. I have been located in that building since 1933, commonly known as the Foreman Bank Building or the American National Bank Building, right across the corner from the City Hall. I

moved into that building in 1933; the building was several years old at that time.

I have known Mr. Johnson for approximately twenty-five years. I first made his acquaintance—so that I could really say I had an acquaintance with him—in 1925. I

36 was never in business with Mr. Johnson; that was when I started this joint venture in this real estate business I was talking about. That is the only property that I ever purchased jointly with Mr. Johnson. Mr. Leo Field brought the deal to me. The property is located at the northeast corner of Dearborn and Division Streets. It has two fronts; approximately 130 feet on Division Street and 120 feet on Dearborn Street. The first floor consists of stores; the second floor is offices and lodge hall; and the third floor is furnished apartments; and then the basement. There is an entrance to these premises from both streets. There is a separate entrance for the basement from Dearborn Street. The same thing is true on Division Street. The entrance from the outside into the basement is separate from the entrance to the first floor of the building on both streets. There is no elevator in the building. There are nineteen apartments on the third floor; one room furnished kitchenette; some are kitchenette and some are just bedrooms. They have been occupied more or less during the time I have been managing the building, always as apartments; no other occupancy of the third floor except as apartments. The second floor has offices besides the lodge hall and the later gambling parlor. There are doctor's offices; at one time there was a beauty parlor up there; but the principal tenants are doctors. The offices are on both Dearborn and Division Street frontage. The lodge hall is located in the north end of the building with an entrance from Dearborn Street; it is a walk up. The Lincoln Park Chapter of the Masonic Lodge occupied the premises from the time the building was built until about 1934 or 1935. My

37 understanding is that the Masons rented their space.

The highest rent, I think, they paid was \$425.00, and then it dropped to \$65.00. At one time it was \$425.00 and then later they gave up some of the time and they only used it for certain evenings, for which they paid \$65.00. The rent was graduated down as times got tougher and the percentage of occupancy was decreased and adjustments were made in their rent as these conditions

changed. So far as I know, there were never any gambling parlors up on the second floor in these lodge quarters prior to the time Mr. Kelly occupied the premises. The premises were empty approximately about a year when Mr. Kelly came to rent them. I did not know him when he first came to talk to me about it. I asked him what he intended to use it for and he said he wanted to run a club room. I asked him about what kind of a membership he was going to have and he said, "Well, they play Keno and cards." That is what his answer was. I didn't rent it to him; I asked him for references and he said that the owner of the building knew of him, so I thought before asking any further questions I would consult with Mr. Johnson. I did consult him. I think it was by mutual agreement between Mr. Kelly and myself that the amount to be charged for rent for the premises was fixed. I think the way it was, we dickered on the price and finally agreed on \$450.00 a month. I think it was about September, 1936, when he went into those premises. He paid his rent usually in advance. All rent is due and payable in advance at the first of the month; that was our usual practice with all of our tenants, and the same arrangement with

38 Mr. Kelly in that respect as with the other tenants.

He paid his rent fairly regularly as long as he was operating his business there. During the time that he got in arrears, they were not using the premises. I don't know whether he was out of business, but his equipment was there; he just didn't pay. I would not know if he did operate; I am not at the building that often to express an opinion on that. He said business was bad and he didn't have it to pay when I asked him about the rent. I think that the \$1,300.00 due for one period was waived entirely. The balance owing in December of 1939 was \$3,100.00; that would be seven months; that would make it about May. I heard that he was not running his club up there; I didn't go up to see. I got that information from the caretaker of the premises.

In the last three or four years we were managing from sixty to one hundred properties; I visited these properties myself more or less frequently. I have thirty or forty employees; some of them visit the properties too, more often than I do. I am the general executive head of this business and the details are left to my employees. When a man ceases to be a tenant and turns in his keys, he does not

come and turn them in to me personally. He would generally hand his keys to the caretaker of the premises when he left. We often have tenants who leave the premises without leaving the keys; we have to have new keys made pretty frequently. I do not know whether Mr. Kelly turned in his keys or not. I know the caretaker has access to the premises; he would not always have access to the premises
39 if a tenant was in there; I do not know what the arrangement was in that respect; there was no special arrangement. I know that the caretaker did not go in and out of these premises at will; I know that he didn't.

This cigar store was just an ordinary cigar store, so far as I could see, and previous to that, had been a little beauty parlor.

A horse parlor is a place where they make bets on horses; I have heard those terms. When Mr. Kelly occupied the premises it appeared to me that there was a blackboard down there with horses' names on it, odds, and so on. I have never bet on a horse in my life. I think it had names on it that looked like they might be horses' names; I did not examine them closely. I didn't pay any attention to them when I walked in there, but if you ask for an expression, that is what I would say. This horse parlor had the use of the upstairs and basement premises. The \$450.00 a month rent didn't start out including the basement and cigar store, but it gradually developed that way. It started out with just the lodge hall; the basement was used as a temporary accommodation. I couldn't say how long the basement was occupied; sometimes for a week. Prior to the occupancy of Mr. Kelly, the Lincoln Park Chapter occupied the basement for their restaurant equipment, banquet hall. It was used in connection with the lodge hall prior to Mr. Kelly's occupying the premises. The basement premises may have been occupied temporarily prior to Mr. Kelly's occupancy by a former tenant that had some trouble with water leaks in the other space, and we may have let
40 him use it temporarily while it was getting fixed; no special arrangements. I am quite sure there were several other lodges that occupied this lodge hall jointly with the Masonic Chapter after the Masons started using it only on part time. There was a space under the Division Street frontage occupied as a billiard hall for a while that was accused of running a gambling house in the space. I do not know what kind of gambling was going on there. It was not any of these defendants so far as I know. I

think it was in 1935 and also in 1936 that there were charges that this billiard hall was also a gambling place. There was quite a turnover in the tenancy of that space. There were several tenants; I can't recall their names. There were none of these defendants so far as I know. Whenever there was space, I would say over a hundred dollars involved per month, I would usually consult Mr. Johnson; usually consulted on the stores and basement, but the offices and apartments I used my own judgment. I remember consulting him particularly about the rental of this billiard parlor space down there in the basement on Division Street. I don't remember the name of the tenant that I discussed with him about the rental of that space. I am still managing this property for Mr. Johnson; this property was bought in 1925. We paid close to \$400,000.00 for it. About \$100,000.00 was paid in cash, and there would be a balance of roughly \$300,000.00 in a mortgage. That was jointly owned by this syndicate clear through to 1933. I do not think the syndicate changed during the eight-year period from 1925 to 1933. There were different percentages of ownership. Mr. Johnson had a fourth interest in 1925.

He put up a fourth of the cash payment—about \$25,-
41 000.00, and he had a fourth interest in the equity of the property then, subject to the mortgage. The first mortgage was already on the property; the second, I think, was signed by the trustee. I am not quite sure about that. The trustee, as I recall it, was the Foreman Bank.

From time to time Mr. Johnson acquired \$15,000.00 of the second mortgage notes, and in 1933 he took over the property and settled with the other owners of the various interests. He took it subject to the mortgages. I think he got an assignment of the certificates of beneficial interests which were subject to the outstanding mortgage obligations. He bought the remaining outstanding second mortgage notes at some discount. It was just a small, nominal discount, I would say. He paid somewhere about \$32,000.00 for these mortgage notes, or \$30,000.00.

I did not talk to anybody about my testimony in this case after I was excused from the stand at the close of court yesterday afternoon. Before I came back on the stand this morning, I did talk with Mr. Miller, the Assistant United States Attorney, just for a minute.

I looked over these ledger sheets; that is, this morning. I am not managing any other property now for Mr. Johnson. Previously I did manage this Thorndale and Glen-

wood premises; that was an apartment building. It is a three-story apartment building containing three fives, nine four room apartments, and a basement flat. My only connection with it is managing the property.

I do not know who operates or owns the Harlem Stables; I never managed it. It looks like a stables.

42 The documents marked Government's Exhibits E-15 to E-20, inclusive, relating to the Dearborn and Division Street property, are records of our office. They are carbon copies of reports sent to Mr. Johnson. These are not the original entries that were made in our books. When a tenant brought in some rent, this sheet was not made up right then and there. That sheet was made up from the receipt book; the cashier made that up; I am not cashier. All the cashier did was to issue a receipt when she received some rents; that is what the cashier was supposed to do under my instructions. After the cashier issued a receipt to the payer of rent, the bookkeeping machine operator would enter it on the monthly statement, on the same day or the next day. Her source of information to make her entries was a copy of the receipt. There were ten receipts to a book and the carbon copy remains in the book. I think the procedure is that the bookkeeper that operated the bookkeeping machine took these carbon sheets and made her entries on the monthly reports. Frankly, I am not sure that that was the procedure; that is an accountant problem that I leave to an accountant to take care of. I think that is the way it works, and what I meant to say when I was talking about these records, is that I think these records are out of our office. They look like our records that we delivered. When I took one of these documents and at the request of the United States Attorney, thumbed it through from the first page to the last. I didn't know any more about it then when I handled the whole thing. By thumbing
43 it through, I could see that they had General Mortgage at the top of the sheet. I would not identify these simply because they said General Mortgage Company at the top of the sheet. Some of the names there indicated the names of the tenants that we had. What I mean to say is that I looked at all these sheets and they looked like they came out of our office. I don't know anything about whether these entries are correct or not, except that I hope they are. In other words, these went through our office in the regular routine. These are not original records at all; they are copies. This is a copy of the monthly rental statements

that was sent to Mr. Johnson, and as far as I know, accurately reflects what took place on these sheets of paper. I do not know that I have a personal knowledge of all these different transactions; it is cutting it pretty fine.

C. and A. Kosinski had a cafeteria. It occupied the first floor space at the north end of the building facing Dearborn Street. Mr. and Mrs. Kosinski were the interested persons. The name was C. and A. Kosinski and they ran a cafeteria. They got behind in their rent; this record shows \$4810.00. They were behind \$4810.00 in April, 1935; I didn't collect all that. I talked to Mr. Johnson about it. He said, if you can't collect it, forget about it—about the same thing that he said about Mr. Kelly.

Somebody else got behind in their rent up there; there were quite a few—an epidemic there was for a while. Mr. Johnson said, do the best you can.

44 The Lincoln Park Chapter got behind in their rent; that is the Masonic Lodge. In September, 1934, they were behind \$2700.00. We had a lot of trouble with them, since 1931, I think. By that I mean, they got broke and couldn't pay their bills. I didn't collect that \$2750.00 in September, 1934. I don't remember if I settled it; I will have to refer further to the records. I do not think I collected it. We may have settled it for a nominal amount, maybe one hundred dollars.

I talked to Mr. Johnson about that. He told me to forget about this Mason Lodge that wasn't paying its rent. He didn't tell me to sue them. From the report I gave him about Kosinski, there wasn't anything else to do but to forget about it; that is what he said. He said there wasn't anything else to do about it except to forget about it; the same thing he did with Mr. Kelly.

45 C. & A. Cafeteria, Inc., are not the same people as C. & A. Kosinsky on previous accounts. C. & A. Cafeteria, Inc. were in arrears \$1066.00. C. & A. Kosinsky occupied the first floor, North end of the building, Dearborn Street frontage. C. & A. Cafeteria occupied the same space. The C. & A. Cafeteria, Inc., was a successor in occupancy of the C. & A. Kosinsky space. By April, 1938, C. & A. Cafeteria, Inc., was \$2760.10 in arrears. They never did pay that. I did talk to Mr. Johnson about it. We discussed the possibility of effecting collection and he asked for my recommendation and I was of the opinion that he could not collect it. We did not file any suit. We decided it was not worth while.

On Exhibit 16, in August, we find the account of Mr. Silverman. He runs a cleaning and dyeing shop and occupied store #16 on Division Street side. In August, 1934, he was \$1121.57 in arrears. The next month the same tenant does not show any arrears. He did not pay the arrears. It was waived. I talked with Mr. Johnson about waiving this indebtedness and he agreed to that proposition. Mr. Silverman continued to occupy the space and continued to pay his current rent. The yellow carbon sheet following there is a carbon copy of a letter I wrote to Mr. Johnson, dated October 2, 1934. I mentioned the Silverman account in there. I told him that the account was in arrears and that I could not collect it. I told him "While it is not our intention to lose sight of this indebtedness we think it is useless to keep showing the account in arrears inasmuch as these tenants are making regular monthly payments as agreed". I told him while I was not going to forget these accounts yet I didn't think I could collect them, and I ought to write them off as a dead account.

46 In that same letter I mentioned a Mr. Brizac. He was \$600.00 in arrears at that time. The August statement shows no arrears. I think the \$600.00 account was written off at the end of August. In the letter I said there is no use carrying those accounts, that I can not collect them. Mr. Brizac continued to occupy space. His business was a French Food Shop.

Exhibit 18 was for the year 1937, which is three years later. Turning to April, it shows his new arrears are \$500.00. In other words, after writing off \$600.00, he got into Mr. Johnson another \$500.00. I do not recall collecting this.

Turning to the first page, January, of Exhibit 20, we find Mrs. Rose's Restaurant there. She occupied the cafeteria space, the first floor, Dearborn Street frontage. In other words, Mrs. Rose had moved into the place where the C. & A. Cafeteria had moved out, and by January, 1939, she had \$2,594.72 in accumulated arrearages. She did not pay. She finally moved out, too. I think she went bankrupt. I did talk to Mr. Johnson about trying to collect that account.

Looking at Exhibit 25, which is for January, 1938, I there find the account of one Walsh. He occupied an apartment at 1358 Thorndale. That is getting out to the other property now. By January, 1938, he had an accumulated

arrearage of \$355.00. Turning to September, 1938, it shows that he vacated, owing \$320.00. I do not remember if we collected it. I think we did talk to Mr. Johnson about those little accounts. I do not remember what he said about them. Mr. Johnson did not pay any attention to the details as to the renting of the apartments. That is what he hired us for. We sent him statements every month. He did not examine our books. He did not come around and talk to us about each one of these tenants when he would get one of these statements. He only talked to me about these matters when I had a large problem, and I submitted that to him for his consideration. My relations with Mr. Johnson in the matter of managing his property were very much the
47 same routine relations I had with other owners whose properties I managed. When I could not collect the rent, I wrote it off.

Mr. Miller: If your Honor please, the Government would like to offer in evidence GOVERNMENT'S EXHIBITS E-9, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25 and 26.

Mr. Thompson: We object to receiving in evidence Government's Exhibits 15, 16, 17, 18, 19 and 20 for identification, which are those voluminous monthly rental reports, on the ground that proper foundation has not been laid for the receipt of the documents, on the ground that the documents contain on many pages matters which have no reference to any of the issues made by the indictment in this case.

If the object is to show the net income from these properties paid to Mr. Johnson for the various years, it is a simple matter of computation without all this irrelevant and immaterial detail in here. The documents, we submit, are confusing and will lend no information as such.

Our point, principally, is the one first made, no foundation has been laid to show that these are original records at all.

Mr. Callaghan: While your Honor is considering those documents, I would like to make the additional objection, so far as the other defendants are concerned, that they are not bound by the entries in those documents, no connection to show that there is any association with these defendants with anything contained in those documents.

Referring to these papers, marked respectively Government's Exhibits E-15-A, for identification; E-16, E-17, E-18, E-19, and E-20, each for identification, are copies of the monthly statements furnished to the owner of the building, showing receipts and disbursements. They were usually made at the end of each month. The bookkeeper made up the monthly records, an original and a duplicate. That is all. We sent the original to the owner and filed the duplicate in our files. We always do that at all times. We made up reports once a month to send to our customers. We sent the original to the customer and filed the copy in our office. We do that so in case we have to refer to them regarding some disbursements or receipts, we would have a record of what we send to our customers. That is what these papers are. These are papers which we copied in our office.

Mr. Thompson: We would like to know whether this witness did the mailing or what he knew about it.

The Court: That does not make a particle of difference. I think I have asked him everything the statute says is necessary to make them admissible.

Mr. Thompson: Well, it is your Honor that is ruling. I have made my objection.

The Court: I will be glad to have you call my attention to anything the statute specifies which I have omitted.

Thereupon the objection to the admission in evidence of Government's Exhibits E-15-A, E-16, E-17, E-18, E-19 and E-20 was overruled.

49 Mr. Thompson: As to documents identified as Government's Exhibits E-22 to E-26, inclusive, which are income and disbursement sheets with respect to this property at Thorndale and Glenwood, we object. No proper foundation has been laid for the receipt of such documents. The documents are not the best evidence of the transactions alleged to be reported therein, and the documents contain pages and pages of matter which has no relation to any issue made by the indictment in this case. The papers contain matter that is immaterial, matter which you are admitting. It is confusing.

The Court: Q. Now, Mr. Witness, if I asked you with respect to all of these exhibits, E-22, 23, 24, 25, and 26, for identification, the same questions which I asked you with

respect to those exhibits I asked you about a few moments ago, would you make the same answers?

The Witness: A. Yes, sir.

Thereupon the objections were overruled and the exhibits received in evidence.

50 Cross-Examination by Mr. Thompson (Continued).

Referring to Government's Exhibit 9, the sheet marked 1, 2 and 3, is the ledger account of the syndicate which owned this property prior to its purchase by Mr. Johnson. This is the ledger account showing the distribution of the second mortgage that was made. This shows what the General Mortgage Company did with the \$45,000 of the mortgage proceeds of the loan. It is a ledger account, entitled "Tavelin-Robin, et al.". That is the name of the borrower. Robin and Tavelin were operating on behalf of this syndicate, and that shows distribution of this \$45,000 loan, of which I think Mr. Johnson had \$15,000. This next group of sheets, marked "Sheet Number 9" is marked "Purchase account", headed by the same names. It shows purchase of these notes by several people. The next sheet, which is marked "Number 415", headed, "Real Estate Loan Register", which consists of four pages, three of which have some writing on them, shows the numbers of the individual notes, the amounts, the date when some payments were made, legal description of the land, regarding the documents on the trust deed. That all relates to the Dearborn and Division street property. The sheet shows a lot of other things, too. Julius Anixter, whose name appears on several sheets, was the owner of several of the notes. The matter at the top, about North River and Boston, is the name of the insurance companies in which the insurance is carried. None of the writing on these pages is mine. The clerks in charge at the time wrote it on there. I know some of the clerks who wrote it. Different clerks wrote on these sheets. They are ledger sheets. I do not know if they were transferred from the books of original entry. I don't think this is the original records, but the other records there are supporting records, at least a supporting memoranda, from which that ledger sheet was made. I do not know what all of those were.

51 It has been several weeks since I saw these documents exhibited to me here in Court. They were taken from my office about two or three weeks ago. They were

first taken four or five months ago. The first time they were returned to my office immediately. I was in the District Attorney's office, and they sent one of the men over to our office to get the records, and he came back with them, and when I left, they sent records back with our bookkeeper. Mr. Clifford and another gentleman were in the office and looked them over. They examined them. This may have been a month ago, and later they were called for. They may have been here ever since.

Examination by the Court.

The first three sheets of Government's Exhibit E-9, shows the disbursement of the proceeds of the second mortgage that was made on the property. The third sheet, "Number 1", is different from the first two sheets. I think that is more of a memorandum account, showing the purchase of individual notes. These three sheets I think are from the ledger in our office, the General Mortgage Investments. The last two sheets are from the real estate loan register that is kept in our office. Every mortgage loan we made we have a loan register sheet, which indicates the amount of the loan, the date, the recording numbers of the document and insurance policies, and the persons to whom notes were sold. In this case, Exhibit 9, there are twenty-one notes. There were six \$5,000 notes and fifteen \$1,000 notes, making twenty-one notes altogether. We make out such sheets on respective loans handled in our office. The entries are made at the time the loan is set up on our books. These entries reflect the transaction as it actually occurred, and these two sheets headed, "Real Estate Loan Register" are made in pursuance of that practice in our office. The person that prepares the mortgage documents for signature also makes up the office records, so that when the mortgage is signed and the file goes to the accounting department, the accounting department knows the nature of the
52 transaction. When insurance policies come in they are noted on the register. The ledger sheets reflect the proceeds of the mortgage loan. It shows what we did with the money. The entries are made about the time that the checks are issued, about the time the transaction is shown by the entries. The entries are correct. That is the practice in our office. In respect of all transactions of that kind that come in to our office, these three sheets were made in pursuance of that practice in our office.

Thereupon the Court admitted in evidence the GOVERNMENT'S EXHIBIT E-9.

Redirect Examination by Mr. Miller.

The store occupied by Mrs. Rhode's Restaurant and the C. & A. Cafeteria takes in 1209 or 1211 Dearborn, and I think probably takes in 13 also. Government's Exhibit E-20 would show street number at which Mrs. Rhode's Restaurant was located. It show 1207-9. That is the store at the North end of the building facing Dearborn Street. It is approximately 50 by 120. It was not the cigar store that I talked about earlier.

Referring to Government's Exhibit E-20 in April, 1939, three lines from the bottom of this page it says "Store", in the second column. The numbers are 1207 and 1209. That record indicates who at that time occupied that store. It says "W. Kelly", "Included in lodge hall rent". Referring to the same Exhibit, E-20, in January of 1939, three lines from the bottom of the page you have "Store", "1207-1209". It says "Mrs Rhodes" "Restaurant".

Q. Would you say from that record, then, that Mr. Kelly at one time occupied the same premises that Mrs. Rhode's restaurant and the C. & A. Cafeteria occupied?

A. I know they never did.

I recognize the property pictured on Government's Exhibit O-2—that is the north end of the building at 53 Dearborn and Division street. It reveals the first, second and third floors facing Dearborn street. Referring to Exhibit O-2 and the floor level even with the street, there is a door that is 1207. That is the same restaurant premises occupied formerly by Mrs. Rhode's Restaurant. The defendant Kelly never did occupy the premises known as 1201 and 1209 in that building. That is the first floor. I do know how I designated the second floor premises on our records occupied by the defendant Kelly. We referred to it as the lodge hall space. I am not certain whether we did or did not ever allow the C. & A. cafeteria, C. & A. Kosinsky, Lincoln Park Chapter, Silverman and Brizac to use another portion of the premises other than the one that they originally leased. I do not think they ever did. Silverman may have, while the store was being remodeled. If I remember definitely now, as we are talking about it, Silverman had the space on Dearborn street when the store he was leasing was being remodeled. I allowed him to use another space during that time. That is the only occasion that I remember right now.

Government's O-3 for identification, is a one story brick building, garage doors on the side, and a sign indicating the Harlem Stables. I think I recognize that as the place I described for counsel for the defense as being the Harlem Stables. I was there at night and I am not sure that this is the building. Government's Exhibit O-4 looks like the place. It looks like the Harlem Stables that I testified that I visited. I never did visit any other gambling establishment, to my knowledge. I did visit the Horse Shoe—may be six months or a year ago. Two or three times in the period, three or four years. I have seen the defendant, Johnson, at the Horse Shoe. I do not think I was ever at the Lincoln Tavern. When I wanted to talk to defendant Johnson I called him on the telephone at home. I do not recall anything urgent that required any other call. I am not certain if I did or not call the defendant Johnson at the Horse Shoe Restaurant. I don't think I ever called him
54 at the D. & D. I do not remember if I ever called any of those places and left any message for him. When I saw the defendant Johnson at the Horse Shoe he was standing around and talking to people.

BENJAMIN G. KILPATRICK, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 6151 Winthrop Avenue. I am associated with the American National Bank & Trust Company as Assistant Vice President, a little more than nine years. My signature appears on Government's Exhibit E-7 for identification. That document was executed on or about the date it bears, February 14, 1934. To the best of my recollection the other signatures appearing thereon were placed there in my presence. The dates and the first paragraph of the document is in my handwriting. Trust Number 2691 is now being executed by the bank in which I am employed. The title is held by the bank for the benefit of William R. Johnson. Government's Exhibit E-7, for identification, is part of the file of the American National Bank & Trust Company, and was produced here by the request of the Government.

Cross-Examination by Mr. Thompson.

This trust was opened January 2, 1934. I believe there was no previous trust which this bank succeeded. I was with the Foreman National Bank prior to going with this bank. This covered the property at the Northeast corner of Dearborn and Division street. I have no recollection whether or not, prior to 1934, a syndicate owned this property which had a trust agreement arrangement with the old Foreman National Bank. All I know is that there is such a trust. This is an assignment of a beneficial interest by Mr. Tavelin and Mr. Johnson. It is a 45/120th 55 interest and also an assignment by John E. Johnson of 75/120ths.

Redirect Examination by Mr. Hurley.

I believe you did ask me whether or not this document was executed in my presence. These signatures appearing thereon, Mr. Tavelin and William R. Johnson, were placed thereon in my presence. My recollection is that they were both present.

Thereupon GOVERNMENT'S EXHIBIT E-7 was received in evidence.

ROY WOLTZ, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 203 Fifth Street, Wilmette. I am the manager of the mortgage loan department of the First Management Corporation, located at 135 South LaSalle. I have been connected with the First Management Corporation since its inception. I know William R. Johnson. I see him here in the courtroom (indicating the defendant). I saw William R. Johnson on or about December 27, 1934, in our office at 10 South LaSalle Street, Chicago. I had a talk with him at that time. He stated that he had a mortgage on some property at Dearborn and Division, and wanted to know if we would extend that mortgage for a year in its present amount. As I recall, the amount was \$140,000. He wanted to extend it for a year.

Thereupon the Court ruled on objection that this con-

versation would be received against the defendant Johnson only.

The Witness continues: I said I couldn't extend it in that amount. He wanted \$125,000. He then said, "If I pay \$75,000, would you extend the balance for a year", and I said, "Yes." The \$75,000 was paid by the defendant

56 William R. Johnson about the first week of April, 1935. It was in the form of a cashier's check on the Northern Trust Company. The balance of \$50,000.00 was paid about a year later. As far as I know, it was paid by the defendant, William R. Johnson. I did not receive it, but I know the mortgage has been paid.

Cross-Examination by Mr. Thompson.

This mortgage was on the property up there at Dearborn and Division Street.

R. H. KRAMMES, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 1332 East Marquette Road, Chicago. I am vice-president of the First Management Corporation, located at 135 South LaSalle Street. I have been associated with the First Management about eight or nine years. Government's Exhibit E-12 is our record of a mortgage loan made on property at the northeast corner of Dearborn and Division Streets, Chicago. The entries appearing thereon were placed under my supervision and direction, and they were made on or about the date the entries bear, in the regular course of business, and those entries are true and correct.

Mr. Hurley: I now offer GOVERNMENT'S EXHIBIT E-12 for identification in evidence.

Mr. Thompson: I object to the document as immaterial, no identification with any defendant in this case. The defendants are not bound by the entries there.

The Court: Overruled.

HELEN NORTON, testified further as follows:

Direct Examination by Mr. Hurley.

I am the same Helen Norton who testified in this case
57 a day or so ago. At that time I stated I was the chief
in charge of the assessment lists in the office of the
Collector of Internal Revenue in the City of Chicago.
Government's Exhibit R-14, for identification, was filed in
the office of the Collector of Internal Revenue of the City of
Chicago. The stamp appearing in the upper right-hand
corner indicates the receiving date of the return in the
Collector's Office March 13, 1935. The other stamp in the
upper right hand corner is March 13, 1935, and indicates the
date payment was deposited in the bank by the Collector.
The serial number appearing on the Exhibit is 624412.
The blue figure in the upper right hand corner is the pay-
ment, represents the payment made with the tax return.
That is placed there by the Collector's Office and also the
red circle indicating the tax to be assessed. The red check
marks are placed there in the Collector's office. The
stamp has been placed there by the Collector's Office.
Government's Exhibit R-15, for identification, was filed in
the office of the Collector of Internal Revenue of Chicago.
That is the individual tax return for William P. Kelly for
the calendar year 1935. Government's Exhibit R-16, for
identification, an income tax return, was filed in the office of
the Collector of Internal Revenue of Chicago for the cal-
endar year 1936. Government's Exhibit R-17, for identi-
fication, an individual income tax return, was filed in the
office of the Collector of Internal Revenue in Chicago for
the calendar year 1937. Government's Exhibit, R-18, for
identification, an individual income tax return for the cal-
endar year 1938, was filed in the office of the Collector of
Internal Revenue in Chicago. Government's Exhibit, R-19,
for identification, an individual income tax return for the
calendar year 1939, was filed in the office of the Collector of
Internal Revenue of Chicago. Government Exhibit
58 R-35, an individual income tax return for the calendar
year 1932, was filed in the office of the Collector of In-
ternal Revenue of Chicago on or about July 15, 1933. Gov-
ernment's Exhibit, R-36 for identification, an individual in-
come tax return for the year 1933, was filed in the office of
the Collector of Internal Revenue of Chicago on March 8,

1934. Government's Exhibit R-37, for identification, an individual income tax return for the calendar year 1934, was filed in the office of the Collector of Internal Revenue in Chicago on March 13, 1935. Government's Exhibit, R-38, for identification, an individual income tax return, was filed in the office of the Collector of Internal Revenue on March 16, 1936. Government's Exhibit, R-39, an individual income tax return for the calendar year 1936, was filed in the office of the Collector of Internal Revenue for the City of Chicago, on March 6, 1937. Government's Exhibit R-40, for identification, an individual income tax return for the calendar year 1937, was filed in the office of the Collector of Internal Revenue for the City of Chicago March 14, 1938. Government's Exhibit R-41, for identification, an individual income tax return for the calendar year 1938, was filed in the office of the Collector of Internal Revenue in Chicago on March 15, 1939. Government's Exhibit, R-42, for identification, an individual income tax return for the calendar year 1939, was filed in the office of the Collector of Internal Revenue in Chicago, March 15, 1940. Government's Exhibit R-58, for identification, an income tax return, was filed in the office of the Collector of Internal Revenue on March 8, 1934. Government's Exhibit, R-59, for identification, an individual income tax return for the calendar year 1934, was filed in the office of the Collector of Internal Revenue of Chicago on March 15, 1935. Government's Exhibit R-60, for identification, an individual income tax return for the calendar year 1935, was filed in the office of the Collector of Internal Revenue on March 16, 1936. An individual income tax return for the year 1936 marked 59 Government's Exhibit R-61, was filed in the office of the Collector of Internal Revenue of Chicago on March 13, 1937.

Government's Exhibit R-62, for identification, an individual income tax return for the calendar year 1937, was filed in the office of the Collector of Internal Revenue on March 14, 1938. Government's Exhibit R-63 for identification, an income tax return for the calendar year 1938, was filed in the office of Collector of Internal Revenue of Chicago on March 14, 1939. Government's Exhibit R-64 for identification, an income tax return for the year 1939, was filed in the office of the Collector of Internal Revenue on March 15, 1940.

Thereupon it was stipulated and agreed that this witness would testify that these various returns, identified by Gov-

ernment exhibit numbers which they all bear, are income tax returns filed in the office of the Collector of Internal Revenue in Chicago, and that the marks that she has heretofore testified to as to serial number and the blue number in the upper right hand corner, the stamp showing the date the payment was deposited by the Collector's Office, the date it was received, and the other red marks appearing thereon, and the "Computation Approved" were placed thereon in the office of the Collector, and that she would also testify that they were received for file there on or about the date received.

The Exhibits for identification are as follows: R-81, R-82, R-83, R-84, R-85, being the returns of the defendant, E. H. Wait, starting with the calendar year 1935. Government's Exhibits for identification, number R-44, R-45, R-46, R-47, R-48, R-49, being the returns of Flanagan for the years 1932 to 1939, inclusive.

Government Exhibit R-50 for identification, R-51, R-52, R-53, R-54, R-55, R-56 and R-57, being the returns of Hartigan for the years 1931 to '39 inclusive. For the 60 calendar year 1934 there are Government Exhibit R-24 for identification, R-25, R-26, R-27 and R-28, R-28 being for the calendar year 1938.

Thereupon Mr. Hurley read to the jury the Government's Exhibit R-6, being the individual income tax return of William R. Johnson for the calendar year 1932, and R-7, the individual income tax return for the year 1933.

HARRY GRUSHKIN, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 6414 North Albany, Chicago. My business is air conditioning. At one time I was connected with the Air Comfort Corporation. Their place of business is in the City of Chicago. I was employed as sales engineer from about approximately 1936 to 1938. During the time of my employment I had occasion to go to a building at the corner of Dearborn and Division Street in the City of Chicago. I saw Mr. William P. Kelly when I went there, about the month of May, 1936. I saw Mr. Kelly on the second floor of the building, in the D & D Club. I had a conversation with him at that time. I see him in the courtroom (indi-

eating the defendant William P. Kelly). I went up to get permission to measure the premises for installing air conditioning.

Mr. Thompson: We object to any conversation with Mr. Kelly out of the presence of the other defendants.

The Court: It will be admissible against Mr. Kelly. Let it be received; not against the other defendants unless it is connected.

The Witness: I introduced myself and told him I would like to measure the premises for the purpose of presenting an air conditioning proposition, and he gave me per-
61 mission to do so. I asked for permission to make the investigation for survey, and he said it would be O. K. to do so, and that I could go to work. As I recall, we made arrangements to come out the following day and measure the premises, which we did. I talked to Kelly at a later date, after this first occasion. I submitted my proposal to him and went back a number of times. I do not recall who was there when I went back that second time. I did see William R. Johnson at that building several days after this original proposition was prepared and taken in. Mr. Kelly was there, Mr. Johnson, and several others. I had a talk with Johnson at that time. We discussed the purchase of this air conditioning apparatus. I remember telling him the price of the equipment. I remember of telling him first that I thought it would run twenty thousand, and after the proposition was prepared I told him the price was slightly in excess of fifteen thousand. When I told him 20,000 it was at the D. & D. Club. I do not recall anybody, except Mr. Kelly and Mr. Johnson, being present. There was nothing said about Johnson the first time I talked with Kelly. I think Mr. Kelly said later I should come back at a certain hour and Mr. Johnson would be there. When I went back I saw Mr. Johnson there (indicating the defendant Johnson). After I told him the probable cost would be \$20,000 I went back later, and at that time had a concrete proposal for him. I went into a discussion of the company and into the merits of the application. I did not give the proposal to Mr. Johnson—I left it on the premises, but I knew that Mr. Johnson had seen the proposal. I had no further conversation with Johnson at that time. I did have a conversation at a later date with regard to air conditioning at the D. & D. Club. There was a discussion concerning some other rooms. The only thing I recollect Johnson saying is that if it worked out satisfactorily at the D. & D.

apparatus might be installed elsewhere. He just mentioned the other rooms. I subsequently visited a place at Irving and Cicero. I saw an old bank building. I think the address was 4715 Irving Park Boulevard. I visited the rooms at 63d and Cottage Grove—I forget the name of the place. I saw Mr. Creighton out there. I see Mr. Creighton here in the courtroom (indicating the defendant Creighton). I went to 97th and Western after I had this talk with Johnson out at the D. & D. I did not see anyone there—the building was in process of construction. I went to the place at 4000 North Harlem. I think the name was Harlem Stables. I went to the Horse Shoe located at Lawrence and Kedzie. I do not recall who I saw out there.

I went into the room at 63d and Cottage Grove Avenue. It was a hand book. Some gambling apparatus was there. The only thing I recall was chuck-a-luck and roulette. There was nothing at 9730. The Harlem Stables was also a big place and had several pieces of gaming apparatus, roulette and chuck-a-luck, and dice tables. I saw the same apparatus at the Horse Shoe, the same as I described at these other places. I remember seeing Mr. Johnson at the Horse Shoe. The occasion of meeting him there was probably in connection with the sale of air conditioning apparatus. Kelly advised me that if I went out there at a particular hour I would meet Mr. Johnson there. I went out there at that time and met Mr. Johnson and had a talk with him at that time. As I recall, it was midnight, or eleven o'clock, probably in the month of May, 1936. He asked when the installation would be completed at the D. & D., and I told him approximately June 10th. We discussed air conditioning in general for a few minutes—I can't recall what was said.

Q. Anything said about these other places you visited?

Mr. Thompson: We object to counsel continually putting words in the witness' mouth.

The Court: Overruled.

The Witness: Something was said to that effect. Mr. Johnson said that the probabilities are that air conditioning would be installed at other places. There was nothing else said in that conversation that I can remember.

Q. Was there anything said about whose places these were you were putting these air conditioning units in?

Mr. Thompson: We object to leading the witness.

The Court: Objection overruled.

The Witness: There was no question about whose places

they were. That did not come up, as I remember. There was no discussion.

I was out at the Horse Shoe at this time and I had a talk with Mr. Johnson about air conditioning. He said that if the job at the D. & D. worked out satisfactorily air conditioning might be installed in other places. He mentioned Irving Park and Cicero Place—that is the old bank building I spoke of, and the place at 63d and Cottage. I do not recall specifically what other places were mentioned—he just referred to other places in general. The only survey I made after the installation at the D. & D. Club was at the Irving Park Place. I did not talk to Mr. Johnson about that. He suggested that I go out there and I contacted Mr. McKay at the Irving Park address. When I went out there I told Mr. Mackay that I was the man that made the installation at the D. & D. Club and that I wanted to survey this place. Mr. Mackay provided a set of building plans for me, which he permitted me to take out, and I copied the floor layout and returned it. I told Mr. Mackay that Mr. Johnson suggested that I call on him.

I had a meeting with Mr. Johnson at the D. & D. Club one night, late, and he signed the order for me that night. They had a consulting engineer of some sort there that night, who discussed the proposition with me. I do not recall what his name was. I have related to you everything I recall that was said by Johnson and myself in that conversation. I have seen the document marked “Gov-
64 ernment’s Exhibit E-14” for ratification. This is a contract to install air conditioning in the D. & D. Club. That is my signature appearing in the lower right-hand corner of the last page, and W. R. Johnson’s signature in the lower left-hand corner. I saw Mr. Johnson place that signature there. The second floor of the premises at Dearborn and Division were air conditioned, and a connection was made from that apparatus to a fresh air intake attached to the ventilating system in the basement. The air conditioning unit installed at the D. & D. Club is in accordance with specifications in Government’s Exhibit E-14 for identification, at the price specified in those specifications.

Cross-Examination by Mr. Thompson.

My negotiations with respect to installing air conditioning service at the D. & D. Club did not commence about May, 1936. The date of the contract was April, 1937, and that is the time. I wish to correct my testimony to that extent. I was mistaken when I said I talked to Mr. Johnson about this matter in 1936. This contract, April 26, 1937, refreshes my recollection as to the time it was. It is correct that it was in April, 1937, and shortly prior thereto, in March, when I had these several conversations with Mr. Johnson leading up to this contract. The time extended over a long period of time. I was a salesman. I was not confined to any particular area other than the county—wherever I could find business. I was sent to the D. & D. Club. A lead came into the office. I was advised at the office that there might be a prospect up at Division and Dearborn. I followed that lead. When I got up there I found Mr. Kelly. He did not tell me I would have to see Mr. Johnson about installing air conditioning. I spoke to Mr. Kelly at the time and told him who I was, and that I wanted to make a survey of the premises. He gave me permission to do so. I did submit a survey back to

65 Mr. Kelly. Then he told me I would have to see Mr. Johnson about it. The question of ownership of the building did not come up—it was not discussed. Afterwards I got in touch with Mr. Johnson. Negotiations from that time on with respect to the D. & D. Club, were not entirely with Mr. Johnson. I went back once and asked Mr. Kelly about it. Mr. Kelly told me that a consulting engineer had been hired, and that they had a number of propositions, and that mine was among the discards, and I asked for permission to come back and discuss it with Mr. Johnson. He said that could be arranged, and I did go back the following night, or the night after, for that purpose. I came back and talked to Mr. Johnson about it. I finally arrived at this contract. It is fifteen thousand and some odd hundreds, less two per cent discount—that is what it says. The contract was entered into for somewhere around fifteen thousand dollars, round figures, and the equipment was installed.

Q. And when you were talking with Mr. Johnson about this job—when you got this job—I suppose you said to him, “Can you suggest where I can get some other business?”

A. Well, I don't recall how the question of this outside business came up. I do remember that Mr. Johnson said there might be a possibility of getting additional business.

Q. You were not looking for any other business, were you?

A. Sure.

The Witness: Of course I talked to a customer to whom I sold an outfit to see if he can suggest some other place where I can go talk to somebody. I possibly said that to Mr. Johnson sometime during the course of this conversation. Of course I did not remember all of the details of these conversations all of these years. Mr. Johnson said to go out and see Creighton out here at such and such an address. I remember Mr. Johnson called a friend of his and recommended me to him at the time. I don't remember whether he said over the 'phone that I would
66 see him. This is just the usual transaction between the probable owner who wanted to install some air conditioning.

Q. And the usual conversation about him recommending other prospects; isn't that true?

A. The telephone conversation that I refer to, I recall him asking the man—somebody away out in the country, on Skokie,—he asked him if he was going to put in air conditioning out there. I think that place subsequently was burned down. I do not remember the name of the place. I went out there, but this fellow said he did not have any use for air conditioning because he had invented his own system—something connected with pumping water out of wells, so I didn't pursue that any further.

I have related substantially all of the conversation I had. That is the only contract that was made with Mr. Johnson about installing air conditioning, and the only survey that was actually completed at his request.

I went up to Mackay, at Irving Park, and made partial survey. We discussed installing air conditioning and Mr. Mackay furnished some building plans that I took and copied and returned, but no specific proposal was ever made on that particular place. This matter of going to see Mr. Mackay came up while I was there at the D. & D. Club. It was suggested to me in the conversation that I might go see Mackay, and maybe get some business there. I do not recall specifically where the information came up, but I remember its connection with my trip to the D. & D.

I do not recall whether it was Mr. Johnson, Mr. Kelly, or somebody else that said "Why don't you go up and see Mackay, up there at Irving Park"? That has been years ago.

67 Mr. Hurley: Now, I will offer in evidence, if the Court please, GOVERNMENT'S EXHIBIT E-14 for identification.

Mr. Thompson: On the part of Johnson we object to it as immaterial.

Mr. Callaghan: The same objection.

Mr. Hurley: That is all.

The Court: It may be received.

Mr. Hess: As to the other defendants we wish to add to the immateriality that it is not binding, with the possible exception of Kelly. He knew something about it. As to the other defendants I submit it is not binding on them in any way.

The Court: It is admissible.

68 H. E. WHEELER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

My name is H. E. Wheeler. I live at 1333 East 50th Street, Chicago. I have been President of the Air Comfort Corporation since 1935. Our corporation installed an air conditioning unit in the D. & D. Club, in the building at Dearborn and Division streets, Chicago. The amount specified in relation to that unit was paid about the middle of 1937.

WALTER A. SOMMERS, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. E. Riley Campbell.

My name is Walter A. Sommers. I live at 10 West Elm Street, Chicago. I am a Special Agent, Internal Revenue, and Special Deputy U. S. Marshal. I know the defendant, William R. Johnson. I recall meeting him in March

of 1940. That meeting occurred at 2840 South Kedzie Avenue. I handed Mr. Johnson a subpoena duces tecum to produce records of the Bon Air Catering Company and Bon Air Country Club.

Thereupon, over the objection of the defendants, the witness testified to a conversation had at the time of the delivery of the subpoena.

The Witness: This subpoena duces tecum was a forthwith subpoena. It was about the end of the week. Mr. Johnson said the book and records were all with his accountants. He wanted to know if he couldn't produce them on Monday. He had an engagement with a Doctor or something. It would be a little inconvenient for him. It would take him some time to get in touch with his accountants. I told him that would probably be all right. I had the subpoena with me. Government's

Exhibit E-68, for identification, is the subpoena to which I have been testifying. The carbon copy of the subpoena is attached to the original. The carbon copy was delivered to Mr. Johnson. The pile of books and records there before me are the records of the Bon Air Catering Co., Inc. These books and records were brought into my office from the U. S. Court House by Mr. Shaw of the accounting firm on the Monday following the day the subpoena was served. The subpoena was served on Thursday, March 14, 1940. These records before me are in the same condition as they were when I first saw them.

Cross-Examination by Mr. Thompson.

I have not had them in my personal custody since they came into my possession. I know, from the general appearance, that they are in the same condition. They still look like the same books that were brought in. I never read these books. I have related substantially all the conversation I had with Mr. Johnson when I delivered the subpoena to him. I probably had heard Mr. Johnson was an officer of the corporation named in the subpoena when I served the summons on him. The books in front of me are the books of the corporation.

TRACY R. STANIS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. E. Riley Campbell.

My name is Tracy R. Stanis. I live at 8618 Ingleside Avenue, Chicago. I am a special agent in the Intelligence Unit of the Bureau of Internal Revenue, assigned to the Chicago Office. I first saw that pile of books in front of me about the middle of March, 1940. They are the books of the Bon Air Catering Co., Inc. I have had them in 70 my custody and control since the time they were turned over to me, until today, when they were brought up here in the courtroom. They are in the same condition they were when they were turned over to me about the middle of March. Mr. Sommers brought Mr. Shaw of Horwitz & Horwitz, auditors, into my office with those books.

Cross-Examination by Mr. Thompson.

After the books were turned over to me I put them in the vault of Room 881 of this building. There are a couple of us who have access to that vault—I think the stenographer up there knows the combination, myself, and Mr. Campbell probably knows the combination—nobody else that I know of. About the first of July, 1940, we moved them down to the U. S. Attorney's Office, and I moved downstairs to that room and took the books with me at that time. We have had them in the file down there. The U. S. Attorney's Office file, the room that I am using in connection with this case. Nobody but the stenographer and myself and the agents connected with this case and the attorneys have access to that room. There is possibly five or six agents connected with this case that have been working on it from time to time. There are about four attorneys, I believe, connected with the case, and one stenographer. What I mean to say is that the books look like they did when I got them.

J. O. SHAW, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. E. Riley Campbell.

My name is J. O. Shaw. I am a public accountant. My office is at 310 South Michigan. I live in Elmhurst. I am associated with Horwitz & Horwitz. We specialize in handling the hotel, restaurant and club class of business. I am a graduate of the University of Illinois, of the accounting school, and experience, I have been in this field since 1925. I hold a C. P. A. certificate in Illinois. I have been a C. P. A. since 1930. A Certified Public Accountant is an individual who has passed the state examination, met the other requirements, and is qualified to certify to financial statements of corporations or individuals. I have been with Horwitz and Horwitz since July, 1927. Prior to that I was with another firm here in the city. All told, my bookkeeping and accounting experience has been about fifteen years. Thirteen years of it has been in the hotel and restaurant and club industry. I would say that I cover all fields of accounting so far as it relates to that particular business—hotels and clubs. I know the defendant, William R. Johnson, sitting here by his counsel to my right. I think I met Mr. Johnson originally in 1938 at the Bon Air Country Club. It was on Milwaukee Avenue, one mile North of Wheeling. I know, in general, what that pile of books there before me are. The top book is the general journal. They are the books of record of the Bon Air Country Club, Bon Air Catering Company, Inc. I believe the corporate name is. Originally we devised and installed the accounting system there and made monthly audits during the first year during 1938. In 1939 we had a resident auditor there, one of our own men, who was there during the season, and also during the current year 1940. The audit and control of these books and records have been under us since the system was installed. We made audits of those books from time to time. We did submit reports based on that audit. We submitted monthly reports—I believe they were addressed to Mr. Wait, the President of the Corporation. I know Mr. Wait—I see him in the courtroom (indicating).

That is the gentleman to whom I submitted the audit reports of the Bon Air Catering Co. In the pile of 72 books referred to previously in my testimony, Government's Exhibit E-46, is the general Ledger. E-47 is the general journal. E-48 is the 1938 voucher register and cash receipts and disbursements records. E-49 is the cash receipts, cash disbursements, and the voucher register and earnings journal for 1939. Government's Exhibit E-50, for identification, is the accounts receivable and accounts payable ledger. E-51 is the operating ledger for the year 1938. E-52 is the operating ledger for the year 1939. E-53 is the corporate records, that is, the by-laws, and minutes, stock records. E-46 to E-53, inclusive, is the record of the Bon Air Catering Co., Inc. The first year they were kept under the corporate control, and we just made audits. In 1939 and 1940 they were kept under the supervision of our man. We made audits and submitted reports for the year 1938. We installed that system of books that I have detailed here, E-46 to 53, for identification. The regular course of business of the Bon Air Catering Company was to make entries in those books. Generally speaking, those entries were made at or about the time of the transaction to which they refer. I would surmise that the Bon Air Catering Co. relied upon those entries in the conduct of its business. The food and beverage, and the golf and swimming activities was intended to be covered by these books and records.

There is an account between the Bon Air Catering Co., the corporation, and the defendant, William R. Johnson, in this case. Government's Exhibit, E-46 for identification, contains such an account. That is the general ledger. It shows the cash transactions of the corporation with Mr. Johnson. The signature of Mr. Johnson appears on the first meeting of the stockholders and the corporate record—that is E-53. I identify Mr. Johnson's signature in the minutes of the first meeting of the Board of Directors, 73 and there is a receipt on the stock certificate stubs.

I can identify the signature of E. H. Wait on Exhibit E-53—that is the Minutes of the Board of Directors, and also on the stock certificate stubs. That is the same Mr. Wait that I identified a moment ago in my testimony. From these books and records, based on my examination and audit of them, I am able to state the amount or amounts advanced by the defendant William R. Johnson to the Bon-Air Catering Co. over the period '38, '39 and '40.

Q. You may state the aggregate amount, please.

Mr. Thompson: We object to that because the question covers a period beyond the limits of the indictment. The indictment was returned on March 29, 1940, and, of course, the transactions subsequent to that are certainly not admissible, I should think. Furthermore, the entries on the books do not prove the conclusion which is comprehended in this question, that the amounts credited to Mr. Johnson were advanced by him personally necessarily. The books speak for themselves, but certainly do not carry the conclusion comprehended by this question. Not the best evidence of what moneys Mr. Johnson advanced.

The Court: Will you read the question to me, Mr. Reporter?

(Question read as recorded.)

Mr. Thompson: Now, if the Court please, the books would be binding on the Bon-Air Catering Company, if they were involved, but not binding on the other parties—they are an alleged book account—because they are not the books of Mr. Johnson.

74 The Court: What about this 1940, the date of the indictment? You included the year 1940.

Mr. Campbell: I think, your Honor, it is a continuing account, going over a period of time. The fact that there is some of this that is outside of the year covered by the counts of the indictment makes no difference because count five is a conspiracy count and it is a continuing chain of events. We are certainly entitled to follow that along just as we are able to show events prior to the year of the indictment.

Mr. Thompson: Well, they haven't proved any conspiracy of any kind yet; no foundation has been laid for any such conclusion and we except to the statement of counsel to that effect. And, furthermore, the indictment is for evading income taxes for the years 1936, 1937, 1938 and 1939. It doesn't involve any other period.

The Court: This is not a case to recover income taxes, as counsel has already pointed out.

Mr. Campbell: Now, your Honor, I have an authority here to support this offer if there is any further question about it. With regard to the showing of conspiracy we are entitled to put in proof and records at any time on the question of conspiracy. In the case of *McNeill v. U. S.*, 85 Fed. Sec. 698, which is from the Court of Appeals of

the District of Columbia, we are entitled to put in evidence on a conspiracy charge even though it tends only to elucidate or aid and assist in determining the truth. I submit, however, here is an account between the defendant
75 and the corporation and there is an expert qualified on the stand to state the result of his examination and audit. Furthermore, these books were kept under his control.

Mr. Thompson: If the Court please, I think the rules as to what is admissible in a conspiracy case are simple, but after all, you have to prove a conspiracy.

The Court: With the undertaking of counsel—an undertaking, I assume, is made to prove a conspiracy, introduce evidence tending to prove a conspiracy. I will receive the evidence.

Mr. Thompson: Of course, this is corporation books, you understand.

The Court: I understand.

Mr. Thompson: And the question calls for a conclusion, which is impossible to state, from the books, which is binding on Mr. Johnson.

The Court: He is asked to state what the books show, in effect. You may answer. His conclusion from what the books show.

The Witness: In round figures, around \$334,000. Of that figure \$273,940 was advanced in the year 1938. \$51,000 was advanced in the year 1939, \$9,663 was advanced in the year 1940. I met Mr. Johnson at the Bon Air Country Club in March of 1940. I talked with him about these books and records at that time. Nobody else was present. It was Saturday afternoon, I would say around the middle of March. Mr. Johnson had been
76 served with a subpoena to produce the records of the Bon Air Catering, Inc., in the Federal Building, and he had a list of the records that were to be produced. I was asked to go out and bring these records in, to identify them and bring them in. Mr. Geary asked me to do that. I did meet Mr. Johnson at the Bon Air Country Club. We went over them and picked out the books that were designated in the subpoena. I went over them with Mr. Johnson and these are Government's Exhibits, E-46 to 52, inclusive, for identification. I believe they were in the safe there at the club on the occasion Mr. Johnson produced them. Mr. Johnson gained access to the safe.

Following that I took them home with me and then brought them down here Monday morning to Room 280 of this building. I exhibited those books and records to Mr. Sommers. I saw him and then we went up to your office and delivered them to you on the eighth floor. I do not remember who else was present. There were two other men there. I don't remember their names.

I do have with me the copies of the auditor's reports which cover the audits that I made of these records, Government's Exhibits E-46 to E-53 for identification. I have those copies. The same stroke of the typewriter which produced the original produced these copies which I have before me. The originals were sent to the Bon Air Catering, Inc. They were addressed to Mr. Wait, the president. Government's Exhibit E-54 is a copy of one of the audit reports. Government's Exhibit, E-57, is another copy of such report. Government's Exhibit, E-58, for identification, E-59, E-60, E-61, E-62, E-63, E-64, E-65, are copies of the audit reports. Government Exhibits, E-55, E-56 and E-66, are our working papers in connection with the audits of the Bon Air Catering Co., covering the results of the audits on examination of Government's

Exhibits E-46 to 53, for identification. The working
77 papers substantiate the results of the audits shown in these reports. In a general way these audit reports purport to show the financial position of the corporation, at the date of the balance sheet at the end of the month that the report is for, and they also show the results of operations for that period. They show that the corporation was indebted to Mr. Johnson.

Mr. Campbell: Then I offer in evidence at this time, your Honor, Government Exhibits E-46 for identification, the general ledger, E-47 for identification, the journal and E-48 for identification, the cash receipts and disbursements and the voucher record for 1938 and E-49, the cash receipts and disbursements and voucher record for 1939; E-50, the accounts receivable and payable ledger for 1938, E-51, the operating ledger for the year 1938; E-52, the operating ledger for the year 1939 and E-53, the corporation record of the Bon-Air Country Club.

Mr. Callaghan: I object, if your Honor please. There is no sufficient foundation laid for this in this record. A further objection is that so far as the defendants I repre-

sent are concerned, they are not bound by the entries in the books of the Bon-Air Catering Corporation.

The Court: Well, they may be received. At the proper time, if you gentlemen think there has been any evidence received which is not admissible and which should not be considered against your clients, if you will submit to me a draft of instructions to that effect and I concur in your contentions, I will give those instructions.

Mr. Campbell: Now, I make the same offer with respect to the exhibits for identification previously read covering the audit reports and covering the working papers relating to the same subject matter.

Mr. Callaghan: The same objection.

78 The Court: Overruled. They may be received.

(Whereupon GOVERNMENT'S EXHIBITS E-46 to E-53, inclusive, and E-55, E-56 and E-66, were received in evidence.)

Mr. Thompson: Of course, as to all of these exhibits that have been offered, I want to make the objection that they are immaterial to any issue presented by the indictment in this case and that they are not covered by the bill of particulars which was furnished pursuant to defendants' request.

Mr. Campbell: They are covered by the bill of particulars, your Honor.

The Court: Overruled.

No cross-examination.

NELSON J. GOODSSELL, being duly sworn, testified as follows:

Direct Examination by Mr. E. Riley Campbell.

I have lived in Chicago for the past fifteen years. I have been a certified public accountant for about fifteen years, under the states of Illinois and Michigan. I have met the defendant, William R. Johnson, at the Bon Air Country Club on one occasion—the first part of September or October of 1939. Mr. Clarence Black and Mr. Bud Geary were present. Mr. Black is a public accountant and Mr. Bud Geary worked for Mr. Johnson. I met Mr. Geary a few days before that. On that occasion I had a conversation with Mr. Johnson. It was related to ac-

counting matters in connection with the Bon Air Catering, Inc. I see before me books and records which were the subject matter of that conversation at that time. I had occasion to examine all of these books during the 79 course of an audit, Government's Exhibits E-46 to 53, inclusive, already admitted. I talked to Mr. Johnson—something about these books on the occasion to which I have referred. There was some question whether certain assets reflected on those books should be on those books. That was discussed with Mr. Johnson. I also, at that time, discussed with him the matter of obtaining access to the corporate records, the minutes, stock records and lease between the Catering Company and Mr. Johnson. We discussed the matter of entries on those books. In 1938, the year prior to the year of my examination, certain assets had been placed on the books of the Catering Co. At the time that I started examination in 1939 the question was raised as to whether those certain assets should be on the books of the Catering Co. Mr. Johnson instructed me in 1939, when I saw him, to take them off. In regard to the minutes, stock records, and the lease, he said that he would see that I obtained access to them, which I did. Certain construction and equipment items in 1938 that had been purchased were placed on the books of the Catering Co. as assets. They were purchased by funds that were provided by credits, four accounts. Those four accounts were credits to the accounts of Mr. Johnson, Mr. Wait, Mr. Geary and a small amount to Mr. Roy Love. I was instructed at that time that these advances for these construction and equipment items had been, in reality, advanced by Mr. Johnson, and should have been credited to him, rather than scattered around among the four of them. Also that the original construction and equipment for 1938 which, as you understand, was prior to the year of my examination, should never have been on the books of the Catering Co., that they were assets, I presume, of Mr. Johnson, and for that reason, on his instructions, I took these asset accounts off the books, reduced the credit to these four men, and merged the balance of whatever credit was left, which was a small one, into the account of Mr. Johnson. I 80 did all that pursuant to the instructions of Mr. Johnson. I see that gentleman sitting in the courtroom now. I think I do (indicating the defendant Johnson).

I recall having seen Mr. Wait at the Bon Air in connection with this matter (indicating the defendant Wait). Mr. Wait's account is one of the accounts which I handled in the manner I have described. I made entries in these books with respect to stock ownership in this corporation. I refer to Government's Exhibit E-47, page 68. I made the entries appearing on page 68. This entry is a stock entry for \$10,000, covering 100 shares of the corporate stock, of which 54 shares were in the name of W. R. Johnson, 25 shares in the name of E. H. Wait, 20 in the name of Mr. J. Hartigan and one in the name of F. Deshinger, and that was in agreement with the stock records. That is the only entry that I know of on those books, anywhere, pertaining to the distribution of the stock ownership of this corporation.

No cross-examination.

Mr. Campbell: Your Honor, I believe I will offer in evidence at this time Government's Exhibit E-68 for identification, the same being the original of the copy of the subpoena testified to by Special Deputy Marshal Sommers and I would like leave to withdraw the original and insert a photostatic copy if there is no objection, at the proper time.

Mr. Thompson: We object to it as altogether immaterial, it does not prove anything. We are not bound by what the United States Attorney wrote on a piece of paper.

The Court: Objection overruled. You may have leave to substitute the photostatic copy.

(Thereupon GOVERNMENT'S EXHIBIT E-68 was received in evidence.)

WILLIAM GOLDSTEIN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

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Direct Examination by Mr. Hurley.

My name is William Goldstein. I live at 415 Aldine Avenue, Chicago. I am a practicing lawyer in the City of Chicago. I have been licensed to practice law in the state of Illinois twenty-five years. I did have certain dealings concerning the purchase of property at 9730 South Western Avenue in the city of Chicago—I think it was in 1937. The property was six or seven vacant lots.

Government's Exhibit E-27 is an escrow agreement for the purchase of lots 32 and 33 in the subdivision at 97th and Western. There were \$3,465 deposited in connection with that escrow in the Chicago Title & Trust Co. by myself, on April 26, 1937. I got that money from William R. Johnson in the form of currency. I paid that money over to the Chicago Title & Trust Co. for the purchase of lots 32 and 33 in Frederick H. Bartlett's Beverly Highland Subdivision. I purchased the property at the request of William R. Johnson. The title for that property was taken in the name of Isador Goldstein, my law partner. There was a deed executed from Isador Goldstein to Ann Homan, my stenographer, and a quit claim from Ann Homan, including the other lots, to William R. Johnson. I delivered the quit claim deed to Mr. Johnson. Government's Exhibit E-28, for identification, is an escrow agreement made between myself, the seller, and Chicago Title & Trust Company. The seller was Tim Quail, represented by Kilgallon. There was \$3150.00 deposited on that escrow. The property was lots 34 and 35 in Frederick H. Bartlett's Beverly Highland Subdivision, 97th and Western. I deposited the money myself, and received it in the form of currency from William R. Johnson. I made the purchase at the request of Mr. Johnson. Government's Exhibit, E-29, for identification, is an escrow agreement I entered into with Mr. Richard J.

Edgeworth on April 26, 1937, to lot 31 in the same 82 subdivision. There was \$2500 deposited with the Title & Trust Company in the form of currency received from Mr. Johnson. I made the purchase at the request of Mr. Johnson. The title was taken to that property in the name of Isador Goldstein, my law partner. A quit claim deed was delivered to William R. Johnson by myself.

I handled the escrow contained in Government's Exhibit E-30. It is concerning the purchase of Lots 38 and 39 in the Frederick H. Bartlett's Beverly Highland Subdivision. The seller is Mr. Tim Quail and Mr. Kilgallon. \$4,000, in the form of currency, was deposited in connection with this escrow by me with the Chicago Title & Trust Co. I got the money from Mr. Johnson. I purchased the property at the request of Mr. Johnson. Title was taken by Miss Ann Homan, my secretary. Subsequently a quit claim deed was made to William R. Johnson, which was delivered to him by myself.

I did have something to do with the purchase of the property known as the Albany Park Bank Building, at

3424 Lawrence Avenue. I went out to the Albany Park Building and interviewed a gentleman by the name of Mr. Larson, who was the chief clerk for Mr. Carter H. Harrison, Junior, who is the receiver for a number of banks closing out. They had an office out at that address. I had a conference with him in connection with the purchase of that building. After making a number of calls and negotiations I submitted an offer. I was requested by Mr. Johnson to go out there and purchase the building for him. The offer was submitted to the Treasury Department at Washington for approval, and after it was approved I believe I made a deposit with Mr. Larson of five thousand dollars at the time. I received the money from Mr. Johnson, in the form of currency. There was a notice, I think, published in the newspaper that the building would be sold to the highest bidder at a certain date, at which time I appeared and bid, I think, around sixty thousand, fifty-nine thousand and some-odd dollars 83 for it. I purchased that property at the request of Mr. Johnson. The exact amount of money expended for the purchase of that property I think was around \$59,800. After looking at the closing statement I can state that the amount expended for the purchase of that property was \$59,887.05. I got that from Mr. Johnson in the form of currency. Title to that property was taken in the name of Ted W. Goldstein, my son. Subsequently there was a quit claim deed delivered to Mr. William R. Johnson by my son. This Albany Park Building property was purchased July 16, 1937.

I did have a part in the purchase of property known as the Bon Air Country Club. I acted at the request of Mr. Johnson. I think it was the latter part of 1937. I handled the negotiations for the purchase of it and after arriving at a price went out there, I think, on one or two occasions, at Mr. Johnson's request. I went out there and looked the premises over to see what it was like, and then I got in touch with Mr. Blumstein, who is the attorney for the Evanston Bank, in Mr. Poppenhausen's office, and Mr. Becker, who represented the bank, came down. We talked. It took about three or four months until we arrived at the price. The bank were the receivers. The price arrived at was \$75,000. I think the initial deposit of \$7500.00 was deposited with Mr. Becker at the Evanston Bank and Mr. Blumstein, the attorney. I received the money from Mr. Johnson in the form of currency. The deposit was made

in the office of Mr. Blumstein. The balance of \$67,500 was paid over to Mr. Becker and Mr. Blumstein at their law offices, in the form of currency that I received from Mr. Johnson. Title to that property was taken in the name of Mr. Ted W. Goldstein. A quit claim deed was subsequently delivered to William R. Johnson by myself. I think approximately 180 acres were involved in that transaction.

I had something to do with the acquisition of other property out in the neighborhood of this Bon Air Country Club. Government's Exhibit E-32, for identification, is an escrow that was executed by me. Seller was Mr. James A. Flynn. There was \$8,000 in currency, received from Mr. Johnson, deposited on that escrow by myself. The property was purchased at the request of Mr. Johnson, and the title to that property was taken in the name of Ted W. Goldstein. Subsequently a quit claim deed to Mr. William R. Johnson was delivered to him by myself. Lot 15 in the Columbia Gardens Subdivision was involved in that purchase. The transaction took place on May 16, 1938.

Government's Exhibit E-33, for identification, contains an escrow executed by me. Albert Tatge was the seller, and involves a house located at the Southwest corner of Milwaukee avenue and Chevy Chase Avenue. The amount of money involved is \$8,500, deposited by myself on that escrow, and received from Mr. Johnson in the form of currency. It was deposited in the Chicago Title & Trust Co., April 1, 1938. The property described in Exhibit 33 was purchased at the request of Mr. Johnson. Title was taken in the name of Ted W. Goldstein. Subsequently a quit claim deed was delivered to Mr. Johnson by myself.

I did execute the escrow contained in Government's Exhibit E-34, on May 2, 1938. The amount of money deposited was \$4,000, with the Chicago Title & Trust Company, Escrow Department. The property involved is lots 25, 26 and 27, in that Columbia Gardens Subdivision. I purchased that property at the request of Mr. Johnson and received the money deposited from him in the form of currency. Title to that property was taken in the name of Ted W. Goldstein. Subsequently a quit claim deed was delivered to Mr. Johnson by myself.

I executed the document contained in Government's Exhibit E-37, for identification, on June 9, 1939. That involved about 175 or 180 acres adjoining the Bon Air. \$60,000 was deposited in that escrow by myself. I received the money from Mr. Johnson in the form of currency. At

his request I purchased that property. Title to that property was taken in the name of Abe Zimmerman. Subsequently a quit claim deed was delivered by Mr. Abe Zimmerman to Mr. William R. Johnson.

I executed the escrow contained in Government's Exhibit E-38, on June 10, 1939. That involved 11 or 12 acres East of the DesPlaines River, opposite the Bon Air. The property I just described a moment ago, in connection with that \$60,000 adjoins part of the property on the East side of the Bon Air and part on the West side of Milwaukee Avenue, within a short distance of this other property. There was \$3800 deposited by myself on that escrow. I purchased that property at the request of Mr. Johnson, from whom I received that money in the form of currency. Title was taken in the name of Mr. Abe Zimmerman. There was a quit claim deed from Abe Zimmerman to Mr. William R. Johnson delivered to him by myself.

I executed the escrow contained in Government's Exhibit E-35 for identification, on November 22, 1936. That involved 8 acres on Dempster Road, in the village of Morton Grove. It is not located with reference to any other property out there. It was formerly known as the Dells property. \$10,000 was involved in that transaction. There was a deposit of that amount made with the Chicago Title & Trust Co. by myself. I received that \$10,000 from Mr. Johnson in the form of currency and purchased that property at his request. Title was taken in the name of Isador Goldstein, my law partner. A quit claim deed was subsequently made by Isadore Goldstein to William R. Johnson and delivered to him by myself.

The escrow contained in Government's Exhibit E-36, for identification, was executed on February 10, 1937. That was 4 acres adjoining the 8 acres of the Dells property. \$9,000 was involved in that transaction. I purchased the property at the request of Mr. Johnson, from whom I
86 received the money deposited with the Chicago Title & Trust Co., in the form of currency. Title to that property was taken in the name of Isador Goldstein, who made a quit claim deed to Mr. William R. Johnson, which I delivered to him.

I executed the escrow contained in Government's Exhibit E-31 for identification on March 18, 1937. That involved 773 acres in DuPage County. Mr. Johnson requested me to get in touch with a gentleman who had an office in the First National Bank Building, and take up the matter of

purchasing this particular property. It is known as the Cutten farm, or Sunny Acres farm, located in DuPage County, near Wheaton. After taking it up with this real estate man we finally agreed on a price, and I reported to Mr. Johnson about it, and arranged for an appointment with Mr. Johnson and the sellers. The escrow was executed on March 18, 1937, at the Chicago Title & Trust Co. \$145,000 was involved in that transaction. I met Mr. Johnson by appointment on that date in the lobby of the Chicago Title & Trust Co. Building. We went upstairs to the 5th floor, the escrow department, where we executed the escrow agreement. The \$145,000 was in the form of currency. The bills were different size. It was a pretty good size package—I would not know just exactly—I guess it was wrapped up in paper. Mr. Johnson had that money when I met him in the lobby. We met this real estate man and Attorney Stickler of the Escrow Department and we arranged and executed this escrow agreement. Mr. Johnson and myself counted the money and went down to the cashier in the office of the Title & Trust Co. It took about an hour and a half or two hours to count the money. That is all that happened that day in connection with that transaction. Title to that property was taken in the name of Mr. William R. Johnson.

87 I have seen Government's Exhibit E-41, for identification, on April 12, 1937. That has relation to the Sunny Acres. The name was the Cutten Estates. I think 160 acres of land were involved in the purchase, adjoining to the East of the Sunny Acres farm. I had a conversation with the defendant Johnson before the purchase of this property. He told me he wanted to buy this farm adjoining this property. I got busy and found that an attorney by the name of George W. Thoma, in Elmhurst, represented the seven or eight heirs who owned this property. We arrived at a price and purchased it. \$16,500 was involved. I received that money from Mr. Johnson and deposited it at the Gary-Wheaton bank, in Elmhurst, in escrow. I received the money from Mr. Johnson. Title to the property was taken in the name of Isadore Goldstein, my law partner. Subsequently a quit claim deed was made to that property by Isadore Goldstein to Mr. Johnson, which I delivered to him. That was about April 12, 1937.

I deposited the money with the Chicago Title & Trust Co. in connection with the purchase of some land adjoining the property to the Curran farm, which has relation to the

escrow contained in Government's Exhibit E-39, for identification. This property was in between the Curran farm and the Bon Air properties. \$10,000 was involved, covering some lots and acreage. The money was deposited with the Chicago Title & Trust Co., in the form of currency. I received it from Mr. Johnson, at whose request the deposit was made, on July 17, 1939. There were no other deposits made in connection with that property, but there were as to other properties in the same vicinity. The amount of money involved was \$7,500, deposited at the State Bank of Evanston, in the form of currency, by myself, which I received from Mr. Johnson. I made the deposit at his request.

I think there was another piece of property adjoining the Curran farm, of 11 acres, east of the DesPlaines river, that

I purchased. Something like \$1,350 was involved. I
88 purchased that property at the request of Mr. Johnson,

from whom I received the money in the form of currency. That was about the same date or shortly after the Curran property was purchased. I think title was taken in the name of Abe Zimmerman. Subsequently, a quit claim deed was made to William R. Johnson, which I delivered to him. I delivered the quit claim deeds to Mr. Johnson personally. The money delivered to me by Mr. Johnson was personally delivered by Mr. Johnson.

I never did collect any rent from the property known as 9730 Western Avenue. I understand there was a one story building placed on that property. I talked to Mr. Creighton about having collected rent from that property. I see Mr. Creighton here in the courtroom (indicating the defendant Creighton). I think the conversation took place some time last year, I believe. I think in February or March of 1940 at my office. He came in to see me, and told me he had been over at the Federal Building and had a talk with the District Attorney in connection with the building, and he told him that he leased that property from me and was paying me five hundred a month. I told him it was not true. We got into a little discussion about it. He knows it was not true. He never gave me any money for rent on that building. I do not know anything about it. Then he said "I, of course, will insist upon that I did." He was going to insist that he paid me five hundred a month. He told some one in the District Attorney's Office that he was paying rent. I believe it was the time the Grand Jury investigation was going on. I have spoken of William R. Johnson and I see him in the courtroom (indicating the defendant Johnson). That is

the Johnson I have referred to during my testimony in regard to these real estate transactions, and with reference to these quit claim deeds to the property I have testified about here. That title to the property was taken in the name of Ted Goldstein and Homan and Abe Zimmerman, who took title in their names, were recorded by me and by me delivered to Johnson. The currency which I deposited in various amounts was in denominations from \$10.00 up to \$1,000.00. The denominations of the \$145,000 in currency which defendant Johnson brought into the Chicago Title & Trust Co. were some thousands, five hundreds, hundreds, tens and twentys, I guess. There were some \$100.00 bills in each instance.

Mr. Thompson: It is our desire to reserve cross-examination of this witness, and ask that he be instructed to return after we have had a chance to examine the many documents that have been referred to, all of these transactions that have been discussed here.

Mr. Hurley: I object, if the Court please. Counsel here has been fully advised. He can examine the records. That is not a good ground.

Mr. Thompson: There is nothing in the bill of particulars regarding these transactions.

Mr. Hurley: We mentioned the amount of money and certainly the amount of land.

The Court: I didn't hear what you said.

Mr. Thompson: There is nothing in the bill of particulars regarding these transactions. This is the first knowledge I have had of all of these alleged transactions in the name of this man.

Mr. Hurley: There is everything in the bill of particulars that the Court ordered; it complies with the Court's order.

90 The Court: No. I think we will pursue the usual order. You may proceed with the cross-examination.

Cross-Examination by Mr. Thompson.

I am a member of the law firm, Goldstein & Goldstein. The members are Isadore Goldstein and myself. There is one stenographer employed in the office and two lawyers, Clarence W. Shaver and William R. Peacock. There are no other people connected with the office in any way. I have no other business besides being a lawyer. I devote most of my time to the practice of law. With the rest of my time I

publish a newspaper at Waukegan, Illinois. I devoted all my time to the practice of law in '37 and '38, up to the latter part of '39. When I was handling these transactions I was acting as attorney for Mr. Johnson. I consider him a friend, being friendly it was not a relationship between attorney and client; I didn't consider it that way. I just handled these transactions as a friend. I consider myself as having been a friend of Mr. Johnson for ten years or more, and the relation still continues to exist. There were four different transactions concerning the property on 97th and Western. An actual agreement as to the first transaction mentioned is E-27. Conveyance of the property was to be made by Isadore Goldstein, my law partner, and the second transaction, E-28, the conveyance was to be made to Isadore Goldstein. The third transaction, evidenced by E-29, the conveyance was to be made to Isadore Goldstein. I did not take title to any of that property. The fourth transaction, E-30, conveyance was not made to me. Anna

Homan took the title of the last property. I think the trust officer or escrow officer at the Chicago Title & Trust, wrote that Anna Homan in there. I do not know what "G. R." after her name means.

Q. Why did you have this stenographer take title to the fourth tract, whereas the other three were to your partner?

A. Well, they were adjoining property. My object was that if one party was trying to buy all that property that the price would be considerable more than what it was purchased for. I always took the title in the name of the nominee. Then after I consolidated it all I would issue one quit claim deed, but it is pretty hard to remember if that is what I did here. I couldn't remember the details of the transaction. I know there were deeds executed. That is all I could remember. I could not tell you definitely the detail about it. I do know who finally got title to the property. I believe that I recorded the deeds myself, or had the Chicago Title & Trust Co. record them. That is, I recorded the deeds or had conveyed the property to Mr. Johnson. The four tracts of land covered by the document we are talking about were, so far as I remember, conveyed to W. R. Johnson or William R. Johnson. My best recollection would be William R. Johnson. I did not say that I recorded the deed to each. I did not record the deed in that instance. I think I made one quit claim deed to Mr. Johnson with respect to these four tracts we are now talking about. I think Anna

Homan signed it. I am not sure about that. She was a single woman at that time. No, sir, she was married in between there sometime—I could not tell you just when. I do not remember whether my partner conveyed to Anna Homan or direct to Mr. Johnson—I do not recall. I do not recall if Mr. Johnson by these deeds that I drafted got title to all of this property. Naturally, if I see the
92 deed I could explain it all in detail. My best recollection is that this property was conveyed to Mr. Johnson by deeds prepared by me and I delivered the deeds to Mr. Johnson. Whether the deed was executed direct by Ann Homan and Isadore Goldstein or whether or not Isadore Goldstein conveyed to Ann Homan and then to Johnson, or whether it was all of it or part of it I couldn't say unless I see the deed. I don't recall that offhand. I know there was some confusion about that particular piece of property—I mean on account of the transaction which involved four or five or six sellers. I don't recall. We tried to withhold information as to who was purchasing that particular property. I tried to withhold it for the purpose of trying to purchase it as cheap as I possibly could. I am not sure whether anybody else was interested in this particular piece of property, Mr. Thompson.

Q. When did you become uncertain about that, Mr. Goldstein?

A. I just happened to think at this moment.

Referring to defendant's Exhibit J-1, for identification, my recollection about whether or not Mr. Johnson got title to this property is that he got an undivided one-half interest. I prepared that quit claim deed and it was acknowledged in my office. Clarence W. Shaver took the acknowledgment. That says that an undivided one-half interest was conveyed to William R. Johnson. Ann Homan and Raymond J. Homan, her husband, signed the deed. It covers Lots 38 and 39 in Bartlett's Beverly Highlands Subdivision, which are covered by the escrow agreement that is under Government's Exhibit E-30. I don't know whether I delivered this quit claim deed, Defendants' Exhibit J-1, for identification, to Mr. Johnson, or left it for him. I do not recall that particular instance.

93 Defendants' Exhibit J-2, for identification, conveys an undivided one-half interest to these lots to Mr. Johnson. The grantors are Ann Homan and Raymond J. Homan, who got title to this property through Isadore

Goldstein, who quit claimed to them. They quit claimed a half interest to Mr. Johnson, and that deed covers Lots 31, 32, 33, 34 and 35, and those are the lots covered by escrow agreement identified as E-29, E-28 and E-27. That was acknowledged before William R. Peacock, a notary public in my office. He is an employee, as a lawyer, in my office. This deed was not delivered by me to Mr. Johnson. The two deeds pertaining to Western and 97th, I don't recall whether I left it for him or whether or not I delivered it in person.

I was a defendant in this indictment when it was returned and it was dismissed when this case was called for trial. I did not have any conversation with U. S. Attorney prior to the dismissal of this indictment. I have talked to the U. S. Attorney three times about this case, after the dismissal. I had not talked to him about these matters in a general way many times before that. I am also a defendant in a pending indictment for perjury. I presume that relates to the investigation of this matter before the grand jury. That indictment is still pending as far as I know. I did not have any conversation with U. S. Attorney as to what disposition is going to be made of that indictment. He did not tell me that the disposition of that indictment will depend upon my performance in this case. We had no conversation whatsoever about the perjury indictment. Nobody representing the U. S. Attorney said anything to me about it. My lawyer has not told me anything about what the deal was. I have been attorney for William R. Skidmore for a good long while, who was also a defendant in this indictment before this case was called for trial. He was dismissed out of the indictment at the time it was called for trial. I have
94 known William R. Skidmore twenty years. I have handled matters for him, I imagine, during that time. I do not recall as to how I became acquainted with Mr. Johnson. Skidmore may have introduced me to him.

Q. He is the man that owns the other half interest in this property out there that we have been talking about, at 97th and Western, isn't he?

A. As I remember it now, I think that is correct.

I guess that is right, but I made a quit claim deed to him for the other half.

Q. And, as a matter of fact, he is the one who brought the cash in to you, instead of Mr. Johnson, isn't he?

A. As I recall it, it was Mr. Johnson.

It is not true that Mr. Johnson knew nothing about this deal until after it was closed. As I recall it now Mr. Johnson,—just to freshen my memory—when the first piece of property was purchased, at 97th and Western, I believe Mr. Johnson sent the money down to me at the Chicago Title & Trust Co., with one of the gentlemen here. In that one instance, on that one or two lots, I don't remember. There was quite a number of transactions, and I just don't recall the details about it. I just didn't give the details of the particular transaction much thought. My recollection is that I made a deed to the half interest of this property and delivered it to William R. Skidmore. I did not say that my recollection is that Skidmore furnished me this cash to buy it. Skidmore did not furnish the money. Mr. Johnson sent it down to me. That is positive. I had a telephone conversation with Mr. Johnson and he told me he was sending a man down with that money to meet me at the Chicago Title & Trust Co. I remember that very distinctly. I did not have any telephone conversation with him about the second transaction. I saw him personally—I don't just recall where. He delivered that money to me in various amounts at various places on various days. It took us an hour and a half or two hours to count the \$145,000. 95 Both of us were counting it. It was tens, twenties, fifties, hundreds, and that is quite a package. If you could count it any faster I don't know. I imagine it took us an hour and a half—I can't recall the exact time.

I am almost certain I know Skidmore's handwriting. That is Mr. Skidmore's handwriting, Defendants' Exhibit J-3, for identification. That does not refresh my recollection as to any particular deal I had.

The amounts there of ten thousand and the 9 thousand, are not identical with the amounts paid for the Dells property. I think the Dells property was more than ten and nine thousand. It was purchased subject to some taxes. My testimony up to this point is that it cost ten thousand and nine thousand. I know the amounts are on there, but I don't know what it is. I don't know if it is an escrow amount, the first deposit. I handled the money, yes, but I don't know whether I handled this particular money that is marked here. They are figures—that is all I know. I do not know that Skidmore handed me that amount of money that is there on that slip. That slip indicates that there was ten thousand of the twenty thousand dollars invested paid by

somebody—I don't know what it is. I don't know that that is an accounting between Mr. Skidmore and Mr. Johnson with respect to the purchase of the Dells property. I don't know, but that may be so, that Mr. Johnson only owns half of the Dells property and only paid half of the price. Sam Hare is the gentleman who I knew that used to operate the place before it burned down. I don't know the Barrett who is mentioned on this slip. Lawyer Herman is the attorney that represented the seller, I believe. I presume the Goldstein mentioned in here is me. There are other Goldsteins, however. I guess that the Goldstein that got \$750. out of this deal was me. Referring to Government's Exhibits,

E-35 and 36, which are the two documents that I have 96 already identified, the first one shows \$10,000 as the consideration for the first part of the Dells property, subject to all unpaid taxes, forfeitures, sales, etc. I did not mention all of them when I first testified. You did not ask me the question. And the second one shows \$9,000 for the second tract, subject to all unpaid general taxes, tax sales and tax forfeitures. I went over my testimony regarding the Dells property yesterday, and today with the U. S. Attorney, and the amount of money. That is all.

Q. Did you tell him that Skidmore owned half of these two pieces that I have talked about?

A. I don't remember that, Judge Thompson. I didn't remember that. I was of the opinion that Mr. Johnson owned it all. Had I remembered, I would not have said so.

Mr. Thompson: If the Court please, that is all we know about this testimony up to the present and therefore we ask to reserve further cross-examination until we have had a chance to inspect the rest of these properties.

Mr. Hurley: I object to any reservation in that respect. If counsel wants to cross-examine this man he can do it now.

The Court: From what has been indicated in the opening statement of counsel this is going to be a long trial. It is going to be difficult for the jury and the court to follow the testimony. Accordingly I will have to ask you to cross-examine the witnesses as they are produced unless some special reason arises or unless counsel agree. If you have any further cross-examination, cross-examine this witness now.

Mr. Thompson: If the Court please, we have no further information and if we get further information that 97 bears on these matters we will want to call this witness again.

The Court: All I am doing now is ruling you to proceed with the cross-examination if you have any, and you will do that.

Mr. Thompson: Well, we have no further cross-examination now. We have no further information with respect to the matter.

Re-direct Examination by Mr. Hurley.

When I was testifying on direct examination I did not have Defendants' Exhibits J-1 and J-2 before me, and I testified on cross-examination that a certain gentleman here in the courtroom delivered that first money for the payment of 9730 Western Avenue. That was Mr. Creighton, whom I identified here today.

(Thereupon GOVERNMENT'S EXHIBITS E-69 AND E-70 were offered and received in evidence, over the objection of the defendants, on the ground that they are immaterial and do not prove any issue in this case.)

Mr. Thompson: We would like to have the witness, if your Honor, please, the witness William Goldstein, instructed to stay in the jurisdiction of this court until this case is concluded.

The Court: What is the reason for that?

Mr. Thompson: Sir?

98 The Court: On what ground?

Mr. Thompson: On the ground that we propose to call him for further cross-examination if we find any—

The Court: Now, that question has been determined. I want you to take that seriously. If you have any further cross-examination do it right now.

Mr. Thompson: If the Court please, we cannot cross-examine him further unless we get some further information regarding these transactions. If we do we shall then present the question to your Honor for decision and we want the witness in the jurisdiction of the court.

The Court: The cross-examination is concluded. Call your next witness.

JOSEPH D. SHELLY called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

99

Direct Examination by Mr. Hurley.

My name is Joseph D. Shelly. I live at 1215 Elmwood Avenue, Wilmette. I am chief escrow officer of the Chicago Title & Trust Co. I have been employed there approximately fifteen years. I have been chief of the escrow department of that corporation for eleven years.

Government's Exhibits, for identification E-27, E-28, E-29, E-30, E-31, E-32, E-33, E-34, E-35, E-36, E-37, E-38 and E-39 are part of the records of the Chicago Title & Trust Co. As chief of the escrow department of the Chicago Title & Trust Co. those exhibits were under my direction and control. The entries on the outside of the envelope, with reference to the cash deposits are not made particularly under my control. They are made by our cashiers, which are not part of the escrow department. Departmentally they are not under my particular control, but the documents, relating to the escrow contained in the envelopes, were under my supervision. The amounts called for in the escrow agreement are identical with the credits shown on the face of the escrow file except in two instances, one of which case is the amount shown on the face of the escrow—is somewhat in excess of the amount specified in the escrow agreement. That is Exhibit E-37, and there is an additional deposit of currency shown in Exhibit 33, which is not mentioned in the escrow agreement. I don't see it covered by supporting papers although perhaps more complete records of the transaction would show that. We can produce the man who actually handled that escrow in my department.

(Thereupon the Government offered in evidence GOVERNMENT'S EXHIBITS E-39, 36, 35, 34, 33, 32, 31, 30, 29, 28 and 27.)

100 Mr. Thompson: If the court please, we object to exhibit 33, which is nothing but an envelope, as altogether immaterial and in no way connected with this transaction described in the indictment. Exhibit 33-A, which seems to be a real estate contract for purchase between William Goldstein and Mr. and Mrs. Tatge, which we object

to on the ground that it is immaterial and that we have not yet had the opportunity to make investigation sufficient to cross-examine respecting this document. And we object to E-33-B, which seems to be an escrow agreement between the law firm representing the Tatges and William Goldstein, which we say is immaterial and also of which we have not had the opportunity to make sufficient investigation to cross-examine; no proper foundation has been laid to bind the defendant Johnson with any of the contents of these documents.

The Court: The objection may be overruled.

Mr. Thompson: Without repeating our objection as to each of these exhibits which relates to the envelopes, we will object to all these envelopes as not being binding on defendant Johnson, as having no materiality with respect to the issues in this case. As to the contents of 27, which is marked now E-27-A, and as to the contents of 28, which is now marked E-28-A, and as to the contents of 29, which is now marked E-29-A and as to the contents of 30, which consists of two sheets of paper marked E-30-A, these are the documents concerning which we first cross-examined the witness Goldstein. The contents are not identified as binding on defendant Johnson and the subsequent testimony of the witness and the documents show that his statements made at the time he so identified them are false statements.

Mr. Callaghan: If your Honor please, the other defendants adopt each and every objection of our associate to these documents and prior documents which have just been admitted. In addition to that objection, the other defendants certainly are not bound by the transactions mentioned in those documents or by the documents themselves.

The Court: What do you say as to the effect of these papers as against the defendants other than William R. Johnson?

Mr. Hurley: Well, we are willing that they be restricted to the defendant Johnson as of this time. If they are later shown to be connected up, all right.

The Court: Very well, with that understanding they may be received.

Mr. Hurley: With the possible exception, your Honor, of the connection shown as to defendant Creighton.

Mr. Hess: As to one possibility? As to one piece?

The Court: As to one piece of property. Which piece is that?

Mr. Hess: 97th and Western; 27, 28, 29 and 30.

The Court: Well, they are received upon the evidence which is already in and upon the undertaking of the government to connect the other defendants.

(Thereupon GOVERNMENT'S EXHIBITS E-27, E-28, E-29, E-30, E-31, E-32, E-33, E-34, E-35, E-36 and E-39 were received in evidence.)

102 Mr. Thompson: Anyway, I make these objections to Government's Exhibit E-31, which is in an envelope, on which there is a lot of writing and other matter which is not identified with any defendant, and is not shown to be material to any issue in this case.

Inside of that we have 31-A, which appears to be an escrow agreement between Goldstein and the Chicago Title—for the owners, I suppose—which is immaterial to any issue in this case, outside of the issues made by the indictment, and outside of the matter furnished in the bill of particulars.

E-31-B seems to be another escrow agreement, which relates to transactions immaterial to this issue. That is all on 31.

E-32 we object to as immaterial to any issue in this case, and is not connected with these defendants, an envelope containing a memorandum.

E-33 is an escrow agreement, which has contents not material and not binding on any of these defendants, and is immaterial to the issues.

E-34 and its contents is outside of the bill of particulars, and is immaterial to any issue in this case, not signed by any defendant, and not binding on any defendant.

E-35, we object to on the ground that it is outside of the bill of particulars; that it is immaterial, and that the document is not signed by any of these defendants and not binding on them.

E-36 and its contents is outside of the bill of particulars, immaterial, and is not a document signed by any of
103 them.

E-39, an envelope containing quite a bundle of documents—the envelope itself is immaterial.

39-A appears to be an escrow order which is not signed by any of these defendants, and is not connected with them or binding on them.

B seems to me--well, B is a letter addressed to a trust company, which is perhaps a trustee, signed by an individual who appears to be a woman; nothing to show that any defendant here had any connection with the document, no materiality, outside of the bill of particulars.

And 37-C seems to be a long agreement of many pages between the seller and William Goldstein, containing a lot of matter altogether immaterial to the issues in this case, prejudicial, in no way binding on any of these defendants and outside of the bill of particulars.

That is all that they have offered in evidence and upon which the Court has not yet ruled, notwithstanding the transcript shows to the contrary.

The Court: The Court's recollection is that Government's Exhibits for identification E-27, E-28, E-29, E-30, E-31, E-32, E-34, E-36 and E-39 were all offered and received in evidence on Friday last.

Objection was made to some of these items and those objections were overruled.

No objection was then made to 31, 32, 34, 35, 36 and 37. The exhibits were all received in evidence.

Objection is now made, as I understand it, to 31, 32, 104 34, 35, 36 and 39; and those objections are overruled and all of the exhibits are received in evidence.

Thereupon out of the presence of the jury, upon a showing made by the United States Attorney and over the objection of the defendants, the Court ruled that Joseph J. Nadherny should be called as the Court's witness.

JOSEPH J. NADHERNY, called as a witness by the Court at the request of the Government, having been first duly sworn, was examined and testified as follows:

Examination by Mr. E. Riley Campbell.

My name is Joseph J. Nadherny. I am an architect. I practice my profesison from my home and from 1518 West Roosevelt Road, Chicago, Illinois. I have been an architect since 1917. I have lived in Chicago ail my life, except two years spent in Philadelphia in school.

I know Mr. Wait, the defendant in this case. I saw him Saturday night at the Bon-air Country Club, I presume about seven-thirty or eight o'clock. I had a conversation

with Mr. Wait in the barroom at that time. Nobody else was present. It did not at first relate in any way with the subject-matter here but it did at the end of the conversation.

Q. Now, Mr. Nadherny, tell what was said at that time and what was done at that time between you and Mr. Wait?

Mr. Thompson: Now, if the Court please, we object to that as having no materiality to any issue in this case and long after the return of the indictment.

The Court: Overruled.

Mr. Thompson: If the witness has any testimony that is direct on the issues in this case let it be given and then
105 see whether it is material.

The Court: Overruled.

The Witness: We were talking casually about various matters. At the end, the subject of the testimony of Friday came up and Mr. Wait mentioned the fact that he felt that some of this testimony was false. In substance, that is all I recall. I couldn't tell you who brought up the subject; I don't remember. I couldn't say that I brought it up, I may have, and Mr. Wait may have brought it up; I don't remember which one brought it up. I couldn't say why it was brought up. Nobody else was around at the time the conversation occurred; it lasted a few minutes only. I had met Mr. Wait somewhere. We sat down on the settee there; we were not drinking. The bar is a room. When I say the bar, I mean a room. It is a lounge; it is not at the bar actually; it was in the room of the bar. I mean to say that I met Mr. Wait in that room and went up and sat down. The conversation lasted a few minutes. He had some business; he got up and went; that is all. I couldn't tell you what Mr. Wait was doing there; I was visiting the place. I met Mr. Wait in 1938 at the Bon-Air Country Club. I met him in connection with the work that was going to be constructed. My best recollection is that he and Mr. Johnson were together at the first occasion at the time the alterations were discussed. They were going to alter the building into a cafe-restaurant. There may have been someone else present; I can't say. This conversation took place in March or April of 1938. It is hard to answer. All I can say is that previous to that time there had been some conversation as to what work was to be done, and on this particular
106 day all I remember is that on a Sunday it was decided definitely what to do. That was to put on a certain addition out from the building. This prior conversation

which I refer to may have been with Mr. Johnson; I won't say; I don't remember the details.

On Saturday night last I saw Mr. Sommers (sitting at the right here) at the Bon-Air Country Club. I just said, "Good evening," just shook hands and said "Good Evening." Prior to that I had met him just a few times at the Bon-Air. He was sitting in the lounge on Saturday night at the Bon-Air. I had no further conversation other than to shake hands and to pass the time of day with Mr. Sommers.

I saw Mr. Creighton at the Bon-Air Saturday night; I had a conversation with him. We talked alone for a while. Mr. Wait sat down for a just a minute. He was present at the end of the conversation which occurred in the rear part of the restaurant; I would say it lasted a few minutes also. That conversation related to an address sometimes referred to here as 9730 South Western Avenue. The substance of the conversation was that Mr. Creighton had paid some of the money for part of the extras done on the job. We had also talked about Mr. Creighton contemplating some work on Jackson Boulevard; that is the substance of it. We also talked about the fact that Mr. Skidmore had paid some of the money, had paid the money or some of the money,—the greater portion of the money on the 9720 Western Avenue Club. That was all, to the best of my knowledge; I don't remember the details. I think Mr. Creighton brought up this subject. Well, we were talking about—something about my testimony, and I had remarked that I had not
107 mentioned the fact that Mr. Creighton—Mr. Creighton had given me some money—had not gone into those detailed facts.

I talked to the United States Attorneys Friday. That was all that transpired between Mr. Creighton and myself; I just mentioned the fact that I had talked to the United States Attorneys and I had not mentioned it; I just had not thought about the thing at all. In other words, I told Mr. Creighton what I told the United States Attorney Friday night. I told Mr. Creighton that I said to the United States Attorney that I had received money from Mr. Johnson and stopped at that point; I did not elaborate on the fact that it was given to me through Mr. Skidmore.

Mr. Thompson: If the Court please, defendant Johnson objects to any conversation related out of his presence with respect to any acts of his.

The Court: Overruled.

The Witness: That was all that Mr. Creighton said to that. We probably discussed his—it was going back and forth, you know.

I would like to explain what is meant by these extras which Mr. Creighton and I were talking about. The building was put up under a contract, and in the course of the operations there were certain extras, and at the end of the job there was equipment put in that had nothing to do with the actual operations, and those extras were the portion of the extras that Mr. Creighton paid for. I think that explains it.

I was the architect for 9730 Western Avenue.

Q. Tell us how you came into the matter, all you did in connection with it; all about it. Just go right ahead
108 as though you were not told what to say.

Mr. Thompson: I object to that and ask that he put the questions:

Mr. Campbell: That is perfectly proper—

The Court: Overruled.

Mr. Thompson: Well, I ask that he put the questions—

The Court: I have ruled. Proceed, gentlemen.

The Witness: I was doing some work for Mr. Skidmore on Kedzie Avenue at the time, I recall—to the best of my knowledge. I remember that he said he has a friend that would like to put up a building, Mr. Johnson, and he said, "He will come up here"—I have forgotten just what day it was that I met him—but Mr. Johnson explained to me what he wanted, the type of building, and I drew up a sketch for him, and I subsequently returned and explained to him, and he says, "Go ahead and draw up plans," which I did, and the building was erected, as I said before, under a contract price, plus a certain amount of extras. The building was 100 by 125; it was a brick building, ordinary type of construction, cement floor in it, open at the time. There were two doors provided in it and I had instructions to make it like a garage and provide for steel in the front, so that it could be opened up. At the time, only small doors were provided. The extras that I supervised installation of in that building to which Mr. Creighton referred in his conversation with me on Saturday, I would say, was a bar, and there was some heating—I couldn't tell you exactly; mainly just for the equipment going inside of the place. There was a small kitchen put in there; there was a bar put in there, and a lounge. I think that is about all.

109 I did not see any of the gentlemen sitting here with their counsel during the course of the construction at that 9730 address.

Mr. Creighton gave me the currency at 63rd and Cottage Grove in all cases for the extras installed in that building; I don't know the address of the place at Cottage Grove; I would say around 6250, 6230; something like that. I couldn't tell you exactly. I met Mr. Creighton at 63rd and Cottage Grove once. A gentleman named Gitzen was present. I think we were through with these extras; we had finished with this extra work and Mr. Gitzen, at the building, told me that Mr. Creighton wants to pay for some of this work done in connection with the equipment. There were questions asked me as to giving suggestions as to the inside finishing of the place, which was the subject of conversation, also, at the time we were at 63rd and Cottage Grove Avenue. Mr. Creighton made payment of around \$2,500.00 in the form of currency to me at 63rd and Cottage Grove. It was on the second floor in the club room. I have since heard of the Club Southland; at that time I never knew of the place. I saw nothing at this particular address where Creighton paid the \$2,500.00; this room was empty; a man let me in. I went through probably two doors before I saw Mr. Creighton. He was in a big room; walking around, I guess. I remember one table; I don't know what else. I think it was empty, as I remember. It was just an ordinary round restaurant dining table. I couldn't tell you where the money came from that Creighton handed to me on that occasion. Prior to this time I have never told any Government official anything about this transaction between myself and Mr. Creighton; I just wasn't asked the question.

110 Government's Exhibit O-8 for identification is the building that was constructed at 9720 Western. That is the building to which I refer in my testimony. That is the first time the extras were paid for by the defendant Creighton.

Mr. Campbell: I offer in evidence Government's Exhibit O-8 for identification.

Mr. Thompson: We object to it as immaterial; outside of the bill of particulars; no relation to any information conveyed by either the indictment or bill of particulars.

The Court: Overruled.

(Whereupon said document was received in evidence as GOVERNMENT'S EXHIBIT O-8).

Mr. Hess: If the Court please, there are some notations which I take it are not included in the offer.

Mr. Campbell: I submit to the Court that the notations on the bottom—it is the address of the building, and some initials. However, if there is serious objection to them, we will blot it out.

The Court: How many of these photographs are you going to put in evidence?

Mr. Campbell: There will be several of them as we go along, your Honor.

The Court: I think it is a good idea to have at least a part of that notation on there. Objection overruled.

Mr. Thompson: I think I might point out at this time, your Honor, this matter of duplicating testimony by having the witness testify and then offering a lot of 111 supporting documents, supporting photographs, and so on, as simply encumbering the record and tending toward confusion. We think it ought to be placed in proper limits.

The Court: It will be placed in proper limits. I don't think that rule has been transgressed up to this time. According to the opening statement of counsel, this case is going to involve a number of different matters, and photographs of this size will enable the Court and Jury to get the matter in their minds and keep it there.

Mr. Thompson: That is not an issue in this case, and has not anything to do with it.

The Court: Now, I have ruled. Will you please proceed?

Mr. Campbell: May I at this time show the photograph to the jury, your Honor?

The Court: Yes.

Mr. Campbell: Q. Who else of these defendants, if any one, did you see at the Bon-Air Country Club last Saturday night?

The Witness: I had just a glance of Mr. Johnson, and that is all. I believe I did mention Mr. Sommers. I didn't mention Mr. Hartigan; I saw him from a distance. I didn't recognize him nor say "Hello," or anything. I didn't have any conversation with Johnson, Sommers and Hartigan last Saturday night, except, as I say, I said "Good evening" to Mr. Sommers.

Other than the work I referred to here, I did the Bon-Air Country Club for Mr. Johnson. We added on from the main room, a room 60 by 60, plus 15 feet for the stage portion; also a tool house was put on the premises, and

a gateway was added in the front. I think that covers 112 the work. I supervised that construction. I don't know exactly how much it cost, because I had no access to the books, but I based my fee at the total work \$60,000.00. I handled part of the payments myself for this construction; I would say mostly in currency; some with a check. I obtained it in the office that was maintained upstairs. Mr. Johnson, Mr. Wait and Mr. Geary gave it to me. I know Mr. Geary was an accountant or bookkeeper. He was an employee at the Bon-Air Country Club. I don't know just what he was doing; auditing accounts, paying bills, probably.

Roy Love handled the work; I would say, almost a contractor on the job; he employed men, and did certain of the major sub items, and those portions that I didn't handle. By that I mean he got prices and submitted them. I saw Mr. Love and Mr. Johnson together a lot of times. I saw Mr. Wait, but other than that, I wouldn't know.

I only know Mr. Geary as Bud Geary. I would say I had seen him with Mr. Wait and Mr. Johnson; the other gentleman I have never seen there. I don't recall seeing them on the project. I don't recall being present when any conversation occurred between Geary and any of these defendants. Mr. Wait and Mr. Johnson were present during conversation between Love and myself. I don't remember any of the others being there, to my knowledge. Mr. Johnson made final decisions on matters pertaining to the Bon-Air Country Club.

I have been around the Bon-Air Country Club and am familiar with the building and the various rooms in the building. There is a club room out there. This particular room used to be a locker room, and when the locker room was built on the other end of the building, that was 113 transformed into a club room; by that I mean certain projections were removed. It was made into a large room. Altogether I was in the room every day while they were working on it, probably a week or ten days; and probably a half dozen times after the job was completed.

I have seen activity in that room; gambling paraphernalia around there; I would say a dice table and roulette. I have seen people around those tables. There always very few when I was in there. The room was approximately thirty by fifty feet. I haven't any idea of the cost of constructing that room. There was a room upstairs on

the second floor—there was no equipment ever put in there. There was no construction of that; it was just a question of painting the inside. The gambling took place in this club room I mentioned on the first floor.

I only recall seeing Mr. Wait at the club room. He was walking around; he was in and around the room, I would say.

The approximate cost of the extras at the 9730 Western Avenue address was around \$6,000.00. The total cost of the job, exclusive of the extras, was \$22,400.00. Mr. Skidmore paid the \$22,400.00. That took place at 2840 Kedzie Avenue. I talked to the contractor, J. S. Olsen, at 2840 Kedzie Avenue.

In the course of construction work on 9730 Western Avenue, I talked to Mr. Johnson on 2840 South Kedzie Avenue. I have a recollection that Mr. Skidmore might have been there, but I can't say very definitely. I was working on Mr. Skidmore's office at that time and they were not finished. We talked in the yard and in the office there. Later on I would say it was in the offices that had been completed.

114 There was not much discussion with respect to this 9730 Western Avenue building because it was practically four walls. There were certain things I talked to Mr. Johnson about. Sometimes Mr. Skidmore was present, and sometimes he was not.

Q. Have you related all that was said in these conversations?

A. Well, it is three and one-half years ago, Mr. Campbell. I am doing my very best for you.

Nothing else was discussed in those meetings besides 9730 South Western Avenue, where Skidmore, Johnson and myself were present.

I would come there with my bills; that is the reason I came. I would present my bills relating to construction on 9720 on the first of the month, so that they would be paid by the 10th. I paid bills relating to 9730 Western Avenue at Mr. Skidmore's Kedzie Avenue address. I got bills there for the Kedzie Avenue building; I got money there for work that I did for Mr. Skidmore, various projects. Do you want those named? I was remodelling a summer cottage for Mr. Skidmore; I remodelled his house; there was a garage erected; there was a greenhouse erected; a dairy was erected and a small sales building. I think that takes in what I did for Mr. Skidmore. That was done in McHenry, Illinois. I

did no work on any farms, Mr. Campbell. That was on private property. It was four miles out of McHenry, Illinois. That is all. It was not on certain buildings on farms. As I say, the residence was there and it was 115 remodeled, and a garage—we took material from the residence that we wrecked and part of it was put into the garage, and there was a greenhouse, but it was on private property. The summer cottage was on private property, on a piece of ground out there, and the dairy was on a piece of farm property, and the sales building was put on a piece of property. I would say two were put on farm property, and the others were private. I haven't any idea of the size of the so-called private property; I would say 700 by 200. It was four miles out of McHenry, Illinois. It is on Pistakee Bay. I supervised this construction I have mentioned and handled a payment of a portion of the bills. I did the work for Mr. Skidmore and he paid me currency. I do not know whether any of those payments were made in the presence of Mr. Johnson; he may have been present; I wouldn't be certain about that.

I would say that I have told you all about the construction work or architectural work which I did for the defendant Mr. Skidmore.

I do not think I mentioned about the Downers Grove work which I did for Mr. Johnson. I did some alterations to his house out there and handled a highway project, that was paid for by the Highway Department. It appears that they widened the street from—I forgot what it was, up to a hundred feet, and this necessitated pushing his gateway to the premises back and also there was a little house which had to be pushed back also, which the Highway Department paid for and, as I say, I handled that project for him also. I would say the total amount involved in this Downers Grove job was around eight, ten thousand; ten thousand dollars I would say. I only paid a portion of it. I paid some bills by currency. I 116 received the money to pay the bills from Mr. Johnson in currency, except for the Highway Department; that was a check from the Highway Department. The property at Downers Grove was Sunny Acres Stock Farm.

I did the Bon Air work for Mr. Johnson in 1939. Thirty feet was added on each side to this room that was put up in 1938—the dining room of the theatre restaurant. One wall was just moved back some for more room and then the other was moved out the other way; and in addition

to that the kitchen was added on to accommodate this further capacity, and also a cafe and a golf locker room, and there was an addition made on the front so that the lobby would be more spacious. I supervised all that work; I paid a small portion of the bills.

I based my fee on a cost of 130 thousand insofar as my actual work was concerned. The bills that I paid were mostly by check; I was reimbursed for those payments in currency received from Bud Geary who gave me those sums of currency at the Bon Air Country Club. He was looking over the books and accounts at the time.

When I came with my bids, Mr. Johnson said, "Award the work," and when I came with the bills I would go into the office and I was paid by Mr. Geary—I think it was. I am getting confused about that. In 1939 when I was bringing in orders for approval, Mr. Johnson said that I should have the orders made out in the name of the Lightning Construction Company because the Lightning Construction Company was going to pay the bills, and Mr. Wait and Mr. Geary may have been there at the time, I just don't recall. I do recall Mr. Geary particularly, though, when I was so instructed; and so, accordingly, in most instances I had these estimates received in the name of the Lightning Construction Company 117 and presented them in that way to the office.

I don't know whether the Lightning Construction Company was a corporation or a company, but Roy Love was one of the company.

The Downers Grove work took place in 1939. I received \$7800.00 as an architect fee for supervising the construction of the Bon Air Country Club in 1939. I received two payments from Mr. Johnson and at one time I asked him for a payment and he said that he is leaving town, or something, that I should see Mr. Skidmore, and Mr. Skidmore gave me that money. I don't know which payment it was. I think it was around \$2500.00 or I think a three thousand dollar payment. I received the balance of my fee from Mr. Johnson; that would be 48. I couldn't say where Mr. Johnson was when he paid me that fee—it was at the Bon Air Country Club. It was paid in currency on Kedzie Avenue. I would say that I have stated all of the work which I have done at Mr. Johnson's direction or request.

I have been inside the building sometimes called the Division and Dearborn, or the D. & D. Club. I went upstairs on the second floor to look at a cashier's booth. Mr.

Johnson wanted a cashier's booth for this club made at Bon Air and I think he called up to make arrangements for me to get into Dearborn and Division to see what they had at this place, and I went in there and looked the thing over and then built one similar for Bon Air. I don't know who Mr. Johnson called; I was not there and didn't hear the conversation. He said he would make arrangements for me to get in there; that is all that was said. He said, I will make arrangements for you to go in and see that cashier's booth, and I went there. We were talking about this cashier's booth at the Bon Air at the time; the

booth was for the Casino. Mr. Johnson said to go 118 over to the D and D Club and look at the cashier's table, the cashier's booth, and when I got at the cashier's booth I said, Mr. Johnson said that he was going to telephone that I could look at this booth. I don't know who it was that I said that to; I don't see the man in the court room. I walked into the second floor of the building at Division and Dearborn Streets. I couldn't tell you how big a room it was—I was only there once; I just would have to hazard a guess and it wouldn't mean anything. This visit occurred in the spring of 1939. There were a lot of people in there gambling, I suppose; roulette, I would say, and dice tables. I don't recall anything else that made an impression on my mind. I couldn't tell you how many dice tables. I think I just walked in; I remember just double doors there. I don't remember if there was any space between the doors—there may have been, I can't say definitely.

I had a conversation with the cashier. They were sitting on top of this booth and I said Mr. Johnson was going to make arrangements for me to look at this booth. I didn't want to get into any difficulty about it. I don't know if I was inside the booth; I think I was up on top, not inside, but I was like on the outside of it. There is a few steps and that is where I was. I made a rough sketch of the booth. I was around it about three to five minutes. I don't remember much about what was going on. I was trying to take some measurements and I was inconveniencing them more than anything else. I mean, they were doing me a favor by allowing me to take a few measurements there. I would say the booth was seven by four, something like that; eight by four. There were two men inside the booth. They 119 were just sitting there when I came in. They were moving around, trying to get out of my way so I could take my measurements.

There was a money chamber there, a little drawer. I don't remember them counting out any money while I was there. I don't remember seeing people make visits to the booth. I would say that the booth was three or four steps off the main floor of the room—well, say, they were eight, two foot eight, probably three foot.

I later installed the same type of booth at the Bon Air.

Government's Exhibit O-9 and O-10 for identification are pictures of the Bon Air Country Club. That is the place that I have been testifying about here, where I supervised the construction work and did the architectural work.

This gentleman, Roy Love, whom I speak of having seen at the Bon Air in connection with the Lightning Construction Company, I recall having seen him at 4020 Ogden Avenue. I mentioned before that there were suggestions as to how the inside of 9730 Western Avenue should be finished and Mr. Gitzen mentioned the fact that I could get an idea of something of that nature at 4020 Ogden Avenue, and so I went there, and a gentleman opened, let me in, and I found out later that was Roy Love. I didn't know him at the time. I subsequently met him—I didn't know who he was at the time.

I also met him at a restaurant at Kedzie and Lawrence. Prior to this time, I have never stated that I did see him at 63rd and Cottage Grove.

Q. Now, until Friday of this last week what had you intended to say if called as a witness with respect to who gave you the currency to make the payments for the 120 construction and the alterations on the property at 9730 Western Avenue?

Mr. Thompson: If the Court please, we except to that speech, which isn't a question, and we object to the question.

The Court: Sustained.

Mr. Campbell: Well, I submit, Your Honor, that—very well.

Q. Have you at other times testified differently to what you have this morning?

Mr. Thompson: We object to that sort of questioning.

The Court: Overruled.

The Witness: Repeat that question, please.

(Question read as recorded.)

A. I have testified to a certain point as far as the payments were being made on Western Avenue in that I said that I received the money from Mr. Johnson, but in doing

so I didn't elaborate on it, because I felt that the payments were being made by Mr. Skidmore in Mr. Johnson's behalf. Does that answer your question?

I am now positive that the currency that I referred to on prior occasions didn't come from Mr. Johnson, but came from Mr. Skidmore.

Mr. Campbell: Q. Mr. Nadherny, will you describe the inside of the premises at 4020 Ogden Avenue?

Mr. Thompson: We object to that detail.

The Court: Overruled.

The Witness: I am sorry I can't help you very much, Mr. Campbell. I was only in there once and it was empty, so I can't tell you just what was in it. It was probably 75 feet wide, 100 feet deep, something like that. Mr. Love let me into the premises on that occasion, although, as I say, at that time I didn't know who he was. I went through one front door to get inside the room.

I was paid the sum of \$1400.00 as a fee by Mr. Johnson for the work I did for him in 1938 about which I have testified. Some I got at the Bon Air; whether I got some at the house, I can't say. I might have got one payment at the house. I think there were three payments; I refer to Mr. Johnson's residence at Downers Grove. Payments were made in currency. Fourteen Hundred Dollars was all of my fee; that was for the work I had done out there in connection with the highway, and so forth.

I received a fee of \$3600.00 for work that I did at the Bon Air in 1938. Johnson paid that out there in various payments in the form of currency.

I have been an architect since 1917. I keep a system of records with respect to my work or business. At the end of the year I have one sheet of paper. I mark down the expenses that I have and the work that I have. At the end of the year I transpose that. I have this little set of books; that is the records of my personal business. I didn't keep any record of the currency which I have testified about here. I didn't keep any record of any bills which they reimbursed me for.

Mr. Campbell: I wish to offer in evidence Government's Exhibit O-9 and O-10 for identification, which have already been shown to counsel, the same being—

Mr. Thompson: We object to the exhibits. They are nothing but pictures of a building. They can't prove anything in this case.

Mr. Campbell: They tend to clarify it.

122 Mr. Thompson: And immaterial to any issue in the case.

Mr. Campbell: Perfectly appropriate to introduce such testimony as that to clarify the testimony of the witnesses, particularly where it is a series of places involved.

The Court: Objection overruled. They may be received.

(Said documents so offered and received in evidence were marked GOVERNMENT'S EXHIBIT O-9 and O-10.)

Cross-Examination by Mr. Thompson.

I met Mr. Johnson through Mr. Skidmore. I have been doing work for Mr. Skidmore just a matter of months prior to meeting Mr. Johnson. I had never seen Mr. Johnson before until I met him at Mr. Skidmore's office, to talk over this 9730 Western Avenue. I would say it was early in 1937. My recollection is that it took about three months or so to complete the work out there at 97th and Western. As I recall, a portion of the money to pay the bills in that case were paid by Mr. Skidmore, and a portion of them by Mr. Johnson; and some of it was paid by Mr. Creighton who had some inside work done there. The plumber made certain provisions for a bar, piping and waste connections. There was a certain amount of work for the kitchen. I would say that was the gist of it. The building itself was just a shell of a building, just a garage construction. I don't know who supplied the improvements for use of the building and put in by Mr. Creighton; he just paid for that work that the contractors had performed in preparing
123 for that equipment. We had nothing to do with any equipment; Mr. Creighton paid for the structural work of the building which preceded the installation of the facilities. That job had been completed before I undertook any work at all on the Bon Air.

Following that year I started work on Mr. Skidmore's project; I would say that was the fall of 1937.

It was just a question of adding one room and a little porch to that little cottage on Pistakee Bay. That was, I would say, 1937. Most of this work that was done on Mr. Skidmore's country place out at Pistakee Bay and on his farm was in 1937, 1938, and I think some was even 1939.

The work that was done on Mr. Skidmore's Pistakee Bay property and also on his farm was all paid for by him. The work that was done on Mr. Johnson's farm out here at

Sunny Acres was all paid by Mr. Johnson. It was on these other properties where different people made different payments on it; there was an interchanging there.

I began work on the Bon Air property in March 1938 so that it would be completed by Decoration Day or thereabouts. Previous to the time I had been working there, that had been a country club property. I had been out there when it was a country club. My recollection is that it used to be the Columbian Country Club and they lost it. Some other interests had taken it over. I would say it was sold through foreclosure or a mortgage on the property. Nothing was said to me about the new owners purchasing it in 1938 when I went there to make these alterations. I don't know who handled the transaction or acquired the property; I don't know who owned the property. I have no idea whether it was owned by one individual or many individuals. I would say that all I know about Bon Air is what I have testified to. I have no knowledge of who owns the property or anything of that sort; it may be a corporation. I couldn't say who owns the thing.

I don't know what Mr. Wait's capacity was there at all. I saw him there considerably. He had a lot to say of the property; I would say he was about the place giving general supervision to its operation; that has been true ever since 1938 clear down to last Saturday night when I was out there. None of these defendants invited me to go out last Saturday night. I have always been there the opening day and closing night, and even though my child was at home with a fever, I got somebody to take care of her so that we could go out there and be there on closing night. Last Saturday night was the closing of the season for this country club; that is why I wanted to be there. I experienced that at various times—the opening in the spring and the closing on Labor Day. I had my wife there with me; we had dinner out there. We went out there to spend the evening. They had music and a floor show. My wife and I had dinner there and enjoyed this show.

125 During the course of the evening I passed the time of day with Mr. Sommers, and that is all. Mr. Johnson was not there until the very last—as I was leaving I chanced to see him. He was with a large group; I did not want to go up to the group. I did not speak to him nor he to me; he may not have seen me.

I saw the defendant Hartigan out there—I would say early in the evening; I don't believe he ever saw me. He

may not have seen me, I don't know. I did not go up and speak to him—I did not see him.

As I remember, Mr. Wait and I just met each other; I just walked into the cocktail lounge. Mrs. Nadherny was not with me in that room. While I sat down on one of the lounges there, Mr. Wait sat down with me a moment and chatted with me. We may have just passed a few remarks and then the subject of the case came up; how, I can't tell you. Mr. Wait just mentioned the substance, as I remember, that some of the testimony was false. He said that Goldstein testified falsely. He said that when Goldstein said that all of the money was paid over by him (Goldstein) directly from moneys given to him by Johnson, that was not so. I don't remember that part. As I remember, it was a very short conversation. I think Mr. Wait got up. Mr. Wait did not tell me to tell any particular story on the witness stand; he said that if I am put on the witness stand I should tell the whole truth; that is all he said. He did not undertake to influence the way I should testify, and this conversation took place right there in the open bar room.

There was no attempt to secrecy—to go off behind any
126 pillars. I didn't notice anybody in that room at the time this conversation was taking place; there may have been others in the room at the time, but I didn't pay any attention to it.

127 I mentioned that I talked to defendant Creighton last Saturday. My meeting with Mr. Creighton was a casual one, no appointment, or anything of that sort. He was just there and I happened to be there also. I have related all the conversation I had with Mr. Creighton the best I remember it. He did not tell me to testify to any particular thing. I think when Mr. Wait joined the conversation he again mentioned the fact about telling the truth, of facts. He did not tell me to, but he said—I think he spoke to Mr. Creighton and said that "Joe will tell all the facts in the case." Mr. Wait said that to Mr. Creighton in my presence. I would not say that I had talked to the U. S. Attorney a good many times about my testimony. The first time I would say was in last December. They had been in my office—I think it was Mr. Clifford, is the best I remember. No, Mr. Sommers was in first, the agent of the Department of Justice. I don't see him around here anywhere. This Mr. Sommers represented to me that he was a Government agent, and showed me his credentials. He talked to me about what I knew about this matter. I saw Mr. Clifford

after that—the gentleman over there with glasses, an agent of the Government. He showed me his credentials. The conversation was in my office, 1518 West Roosevelt Road. It is a mortgage house and I have desk space on the second floor. I would say that the first conversations with the Government agents were last December, '39. After I talked to these agents I was brought back to the Federal Building. I talked to Mr. Campbell, Mr. Miller, and I think Mr.

Plunkett. That is these three men who have been examined as witnesses here. I remember the one talk in

December. I talked with them an hour and a half, I would say. Then I appeared before the grand jury sometime after that—I do not remember exactly—I would say it was in December. The next contact I had with the Government Agents or attorneys I would say was within the last sixty days, after I testified before the grand jury. After that they talked with me again. They had me before the grand jury just once. I would say that I talked to them probably three times after I had testified before the grand jury. Those three times occurred in the last sixty days. The last time I talked to them was Friday. I discussed my testimony here in the court with Mr. Miller and Mr. Hurley, who are here as Government counsel. I talked with them probably half an hour. I talked to them this morning before I got on the stand—I would say probably nine thirty—they told me to report at nine thirty and I did, at the office of these men here downstairs. I talked to Mr. Hurley, Mr. Campbell and I think Mr. Miller was there part of the time. These are the same gentlemen to whom I have been referring.

Redirect Examination by Mr. Campbell.

I did do something between Saturday night, when I met certain gentlemen at the Bon Air, and this morning, about seeking advice with respect to the matter of my testimony. This thing has been—naturally I have been, it has been dwelling on my mind, and during the week I meant to see Mr. Kirkland who is a very good friend of the family, and, as I say, yesterday I had nothing to do, and I thought I would get in touch with him and see what he had to say, which I did. I wanted to talk the situation over with him and he advised me. I had mentioned the fact that I had received money from Mr. Johnson in the interpretation that it was—I had received it from Mr. Skidmore with the

129 interpretation it was coming from Mr. Johnson, and that that fact I had not elaborated on, and also about these extras that I had not mentioned, the fact that Mr. Creighton had given me some of this money, although my recollection is at the time I was testifying before the grand jury that question did not—I think you culminated my appearance at that point, if I am correct.

On last Friday I went over my proposed testimony with Mr. Hurley. I did not indicate to him that any of this money had come from Mr. Skidmore. I was still under the impression that it came through like an agency, so following advice of my counsel I came down to the building this morning with the intention of elaborating on those facts. Prior to this morning I did not at any time mention to any Government counsel that any of this money came from Mr. Skidmore.

I first met Mr. Creighton at 63d and Cottage Grove. Mr. Gitzen must have introduced me, because I met Mr. Gitzen there by appointment. I first met Mr. Wait at the Bon Air in 1938. I do not believe I ever met Mr. Hartigan, only by casual meetings. I probably started to say "How do you do" to him. I don't recollect any formal introduction to Mr. Hartigan. I saw him at the Bon Air for the first time. I never saw Mr. Kelly, Mr. Flanagan or Mr. Brown. I do not know whose writing is on the face of Exhibit J-3. I see it—it doesn't mean anything to me.

SAM YOSEEN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Sam Yoseen. I live at 4300 Sheridan Road.

I am an interior decorator. I operate my business under the name Mid-West Drapery Company. I know the defendant, William R. Johnson about three years. I met him at his home, supervising the installation of draperies and furniture. Thereafter I had occasion to sell equipment to the Bon Air Country Club in the spring of 1938. I sold some equipment in 1939. Mr. Wait gave me the orders for the equipment that I testified I sold to Bon Air. I see Mr. Wait in the courtroom (indicating the defendant Wait.)

Referring to Government's Exhibits E-71 and E-72, for

identification, one of the aggregation of invoices and bills, of a total of \$18,387.65, paid on June 3, 1939, and the other invoices amounting to \$2,402.43 paid on June 28, 1939, those are my records made in the usual course of my business. It is the usual and customary course of my business to make such records. The total cost of the goods sold to Bon Air and defendant Ed Wait during the year 1939 is approximately \$21,000. I was paid for those goods and services by Mr. Wait and Mr. Geary. Mr. Geary was present at the time of the payment.

Mr. Thompson: If the Court please, it develops that this payment was by Mr. Geary, apparently on behalf of Bon Air Corporation. We object to it as not identified with any of these defendants, and it is, apparently, a duplication of the amounts from the books that were produced of Bon Air, showing the amount of moneys advanced, and apparently this is something all over again.

Mr. Plunkett: If the Court please, the books of the Bon Air that were produced do not reflect payments made during 1939. That is why we are proving these things.

Mr. Thompson: You have produced part of this for 1938.

Mr. Plunkett: You can look at the exhibits; there are no 1938 payments in there.

Mr. Thompson: It has been testified that Mr. Johnson advanced \$9,000 in 1939. That accounts for certain 131 expenditures. Now, they are proceeding to show that this corporation paid the money, whereas they have shown that Mr. Johnson advanced to that corporation \$300,000 in something like three years. Unless they can show that these payments by the Bon Air is something other than they have shown, it is manifestly duplication, but if it is expenditures made by that corporation, it is a different thing.

Mr. Plunkett: These expenditures do not appear on the books of Bon Air, if the Court please.

The Court: Overruled.

The Witness: Mr. Geary was present at the time of the payment. I was paid in cash two different days. The first payment was on June 3, 1939, in the amount of \$18,387.65. Mr. Geary counted the money and Mr. Wait was present. This took place in the office of the Bon Air Country Club. The second amount was paid by all cash, the same place, by Mr. Geary and Mr. Wait. I did have occasion to be present at a conference with defendant Johnson in the course of my dealings at Bon Air. Mr. Wait and Mr. Davis

were present. This conference took place in the spring of 1938. We submitted samples for draperies and furniture—also submitted a price. Mr. Johnson was informed of that price in my presence. He thought it was more than he wanted to pay for that particular item.

Mr. Plunkett: If the Court please, the Government will offer in evidence GOVERNMENT'S EXHIBITS 71 and 72. I submit them to counsel.

Mr. Thompson: If the Court please, we object to the documents. They have already proven the amount of the payments and the date of the payments. If they are material at all, the documents are a mere duplication, encumbrance of the record, and confusing; also the defendants are not bound by them.

Mr. Plunkett: They corroborate the entire testimony of the witness, if the Court please. He has testified they are his own records, made in the usual course of his business.

132 Mr. Hess: As far as the other defendants are concerned, we object on the ground that they do not apply to them at all. The documents purport to be amounts against the Bon Air Country Club Corporation. Their names are not mentioned in any way.

Mr. Plunkett: It does not say anything about the corporation.

Mr. Hess: Well, it is proved here that it is. The merchandise is merchandise one of the officers bought, with which my seven clients are not connected.

Mr. Plunkett: One of them is.

The Court: What do you say about the defendants other than Mr. Wait?

Mr. Plunkett: Well, we are willing that the testimony be admitted subject to later being connected with the defendants you complain of.

Mr. Hess: All right. That is all I can say on that point.

The Court: They may be received.

No cross-examination.

H. E. ANDEBSON, called as witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is H. E. Anderson. I live at 6940 Overhill Avenue, Chicago. I am connected with the Narowetz Heating and Ventilating Co. I have been with that company fourteen years and have been treasurer about five. I had occasion to install certain equipment at the Bon Air Country Club in the year 1939. The equipment was kitchen exhaust ventilating system. We also did the sheet metal duct 133 work for the air conditioning system for the Air Comfort Corporation. That was the early part of 1939. That ran about \$2,000.

Government's Exhibit E-77, for identification, is our ledger sheet of the Lightning Construction Company. That record is kept under my supervision and direction. The entries appearing thereon are made at or about the time the transactions took place, and they are true and correct. The exact amount paid for the installation of this equipment that I spoke about is \$2,258. and I do not recall the pennies there. That amount was received by me in payment of the installation of this equipment. The first payment of four hundred and seventy-five, I believe, was paid by check to the Lightning Construction Co. The balance was paid in currency. I received the money from Mr. Geary at the Bon Air Country Club. I do not know what he was doing there. He was in a kind of a business office there—kept some kind of a record of some sort. I do not know where he got the money that he gave me—he handed it to me. The office is located on the second floor of the Bon Air. Nobody else was there when Geary gave me that money.

I met Roy Love at the Bon Air Country Club. He seemed to be supervising some work around there, around the swimming pool at the time I met him. I only saw him there once.

I believe I talked with Mr. Nadherny, the architect, first, and he perhaps met Geary at the building and referred me to him.

Mr. Hurley: I offer in evidence at this time, if the Court please, GOVERNMENT'S EXHIBIT E-77, which is marked for identification.

Mr. Thompson: We object to these documents as no proper foundation having been made for the reception in evidence.

The documents seem to be billings to the Lightning Construction Company and a ledger sheet which I suppose is a duplicate of all those individual bills attached to it. It 134 appears to be no connection with these defendants, outside of the issues in the indictment, outside of the scope of the bill of particulars furnished.

This is certainly an encumbering of the record with a lot of duplication. The witnesses testified to the summary and the Court can see here that the ledger sheet is a complete duplication of the documents attached to it, and confusing and likely to constitute a doubling up of amounts spent here.

We further object on the ground that the Bon Air Corporation's books which have been put in evidence include these amounts in the amounts indicated there as having been spent.

The Court: Objection overruled. They may be received.

(Said document so offered and received in evidence was marked E-77.)

No cross-examination.

JOSEPH J. RADOMSKI, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Joseph J. Radomski. I live at 2257 West 23rd Place. I am an accountant and income tax counsellor. I know the defendant, William R. Johnson. I see him here in the courtroom. I know these other gentlemen I see in the courtroom, Mr. Creighton, Mr. Wait, Mr. Kelly, Mr. Sommers, Mr. Flanagan, Mr. Hartigan and Mr. Mackay. I did have certain books and records of the Sunny Acres Farm in my custody. I had a meeting with Mr. Clifford in connection with that—I believe about May, 1939, at 523 South Green Street, my office there—and I also worked there. I talked to Mr. Johnson before I saw Mr. Clifford at my office. He says Clifford wants to see the record given 135 to him. Subsequent to that I met Clifford. I believe I had the summary sheets, my work sheets and the books

of the farm at my office, black books, large books, approximately 15 inches square or more, regular cash book size. There were two cash receipts and disbursements. Besides I had work papers. I had invoices besides the work papers and the books. I could not tell you how many—whatever were entered in the books. They were Mr. Johnson's—they were the records of Sunny Acres Farm. When Mr. Clifford came there we went over the books and when he wanted to ask me a question I answered him. He checked them. I believe he transcribed them, or made some reports of some kind. I had charge of the records. I made the entries in those books. The work sheets were made up by me. To my knowledge those entries on those documents were true and correct as I made them. I didn't find anything wrong with those entries after that. After Mr. Clifford was through with them I took them back to Mr. Johnson's farm. They have since been out of my control. These books were turned over to the defendant Johnson. The work sheets and bills were turned over to the farm office, where they were put. That was his office there at the farm, known as Sunny Acres Stock Farm, located at Lombard, Illinois. I have seen the defendant Johnson at that farm. I believe it was one of his places of residence. I know the signature of William R. Johnson. The name on the back of page 2 of Government's Exhibit R-13 is William R. Johnson's signature. I would not know if that is William R. Johnson's signature on Government's Exhibit R-6. I do not know that signature on Government's Exhibit R-7. I do not know whose signature appears on the lower right-hand corner of Government's Exhibit R-8. I do not know whose signature that is appearing on the lower right-hand corner of Government's Exhibit R-9. I do know the signature appearing in the lower right-hand corner of Government's Exhibit R-10—it is the signature of William R. Johnson.

I saw him place the signature there. I know the signature appearing on Government's Exhibit R-11 is that of William R. Johnson—I saw him sign it. I do know the signature appearing on the back page of Government's Exhibit R-12. It is William R. Johnson's. I saw him place his signature there. I had seen John M. Flanagan sign his name. Mr. Flanagan placed that signature on Government's Exhibit R-46. That is the said Flanagan I pointed out here in the courtroom. He placed that signature thereon in my presence. The defendant Flanagan's signature appears on Government's Exhibit R-47, for identification. I

saw the signature placed there by Flanagan. I prepared the returns, Government's Exhibits 46 and 47. Flanagan's signature appears on Government's Exhibit R-48. I saw him write it on there after I prepared that return. Flanagan's name appears on the reverse side of Government's Exhibit R-49. It was placed there in my presence. I made that return. E. K. Wait placed the signature on Government's Exhibit R-82 in my presence. I prepared that return. Mr. Wait signed Government's Exhibit R-83, for identification, in my presence. I prepared that return. I wouldn't know whether or not defendant Wait's signature appears on Government's Exhibit R-84, for identification. I did not prepare the return. I have seen him sign his name on numerous occasions. Government's Exhibit, R-83, for identification, the signature of E. H. Wait on Government's Exhibit R-83, for identification, and Government's Exhibit R-84, for identification appear to be the same signature. The signature on Government's Exhibit R-85, for identification, looks to be the same as the signature on Government's Exhibit R-83, but I did not prepare that return. I know the signature appearing on Government's Exhibit, R-54 for identification. That is James Hartigan, whom I have pointed out here in the courtroom. The return was prepared 137 by me, and the signature of James A. Hartigan placed on this document in my presence. The signature of James A. Hartigan was placed on Government's Exhibit R-55 in my presence, and is the signature of James A. Hartigan. I prepared that return.

The signature of James A. Hartigan on Government's Exhibit R-56, for identification, is that of defendant Hartigan here, and was placed on there in my presence. I prepared the return. The signature of James A. Hartigan was placed on the reverse side of Government's Exhibit R-57, for identification, in my presence, by Mr. Hartigan, who I have pointed out here. I prepared that return. The signature of Reginald E. Mackay was placed on Government's Exhibit R-26, for identification. That is the same Mackay I have pointed out here in the courtroom. That return was prepared by me. That is the signature of Reginald E. Mackay on Government's Exhibit R-27, and was placed there by Mackay in my presence. I prepared that return. The signature of Reginald E. Mackay was placed on Government's Exhibit R-28, for identification, in my presence, and was written on there by defendant Mackay.

The defendant Jack Sommers wrote his name on Government's Exhibit R-39, for identification. I prepared that return. That is the same Jack Sommers I pointed out here in the courtroom. Jack Sommers' signature appears on the reverse side of Government's Exhibit R-40, for identification. I prepared that return. Sommers placed his signature on there in my presence. Signature of Jack Sommers appears on Government's Exhibit R-41, (the reverse side,) for identification. Mr. Sommers placed his name there in my presence. The name of Jack Sommers is written on the back of Government's Exhibit R-42, for identification. Jack Sommers placed his name in my presence. I prepared the return.

The name of A. J. Creighton was written on Government's Exhibit R-62, for identification, in my presence, by

Mr. Creighton, whom I have pointed out here in the 138 courtroom. I prepared the return. The name of A. J.

Creighton was written in my presence by A. J. Creighton on Government's Exhibit R-63, for identification. I prepared the return. The signature of Andrew J. Creighton appears on the reverse side of Government's Exhibit R-64 for identification. It was placed on there in my presence. I prepared the return.

I prepared the return, government's Exhibit R-17. I saw the signature of W. P. Kelly, the defendant that I pointed out here, placed on that document. The signature of William P. Kelly appears on Government's Exhibit R-18. It was placed there by William P. Kelly in my presence. I prepared the return. "William P. Kelly" appears on Government's Exhibit R-19. William P. Kelly placed it there in my presence. I prepared the return.

Respecting Exhibit R-13, the income tax return for the calendar year 1939, I received the figure \$256,710, appearing on the first page of the form, from Mr. Johnson. He did not furnish me any books showing how that figure was arrived at. He put it on a piece of paper, that one figure, and gave it to me, and that is the figure I put on there. The schedule which shows the source of income appearing on the return, Government's Exhibit R-13, was filled out by me on this return. "Source of income," speculator and farmer. Mr. Johnson gave me the figure opposite the line, "State income from business or profession," showing it to be \$103,265.70. Government's Exhibit R-12, the return of Johnson for 1938. I did not examine the books and records. He gave me that figure on a piece of paper. He said

"That is my income for the year 1938." I filled out the schedule showing the source of income "Speculator, \$106,400." I got the figure, \$255,240.07," which is opposite the line showing "Income from Business or Profession, Form Schedule D," Government's Exhibit R-11, from Mr. Johnson. There were no books or records submitted in connection with that figure. I got that figure on a piece of paper. He said "that is my income" when he handed it 139 over to me. I believe I got the figure, \$145,165.70," appearing opposite the line which shows net profit from business or profession from Schedule A of Government's Exhibit R-10, income tax return for defendant Johnson for the calendar year 1936, on a piece of paper. This figure here, I believe, was written on the paper, \$148,300. I did not examine any books or records with reference to the figure. He just handed me a slip of paper with the figure on it. Regarding those figures you called my attention to, Johnson told me he earned that money gambling. He did not say anything else.

Mr. Hurley: At this time, if the Court please, I would like to offer in evidence, GOVERNMENT'S EXHIBIT R-82, for identification and R-83, for identification, being income tax returns for the defendant E. H. Wait, for the years 1936 and 1937.

I also offer in evidence GOVERNMENT'S EXHIBITS R-46, 47, 48 and 49, returns of the defendant Flanagan.

I also offer in evidence returns of the defendant Kelly, which are GOVERNMENT'S EXHIBITS R-17, 18 and 19.

The defendant Hartigan, GOVERNMENT'S EXHIBITS R-54, 55, 56 and 57.

The defendant Creighton, I offer GOVERNMENT'S EXHIBITS R-62, 63 and 64.

Defendant Mackay, GOVERNMENT'S EXHIBITS R-26, 27 and 28.

As to the defendant Sommers, GOVERNMENT'S EXHIBITS R-39, 40, 41 and 42.

Mr. Hess: I would like the privilege of examining the witness on some of these, after which I will wish to present any suggestions I have by way of objections.

The Court: Very well.

Mr. Hess: I would like to see these papers.

I am not a public or certified accountant. I have been in that line of business five or six years, mostly income taxes, tax counsellor, federal and state tax. I have been with the Revenue Department, I believe from 1927 to 1935. I quit the Government and went into the business of accounting in connection with income taxes. I believe I am familiar with the making out of income tax returns and the requirements of the Department in connection with those returns. I prepared these returns with respect to which I testified as an accountant. Then I certified that I did that. That is my name at the bottom of Exhibit R-39, with reference to Mr. Sommers, certifying that I was the accountant who prepared that document. Wherever my name appears on all of these documents I have testified to I prepared them as an accountant and certified to them in that fashion. As a former revenue man I know the contents of this certification. To my knowledge, wherever I certified to these returns, that certification was true. I would not certify to an income tax return to a government department where I had been employed unless I knew that what I certified was true as an accountant. I believe I left the Government in 1935. The first return I made for any of the gentlemen I identified I believe was Mr. Johnson, and I believe in 1936. When I said on direct examination that I prepared these returns I mean that the pen and ink writing on the form is my writing.

Now, I want to lodge my objections as to R-26, 27 and 28 purporting to be a tax return of the defendant Mackay. I object to those on the ground that there is nothing mentioned in the bill of particulars about the filing of returns by Mackay as aiding and abetting under this indictment.

As to the others which I will have to recite—R-62, 63, and 64, being for Creighton for 1937, '38 and '39, I object 141 on the ground that nothing appears here that they were filed for any purpose whatsoever to aid and abet Johnson in the attempted evasion and defeat of his tax.

The same objection to R-46, 47, 48, and 49, Flanagan, for the same reasons that I stated as to Creighton.

54, 55, 56 and 57, Hartigan, for the same reasons that I stated as to Creighton.

39, 40, 41 and 42, Sommers, for the same reasons that I gave to Creighton.

82 and 83, Wait. The same reasons that I gave as to Creighton.

There is nothing in the evidence so far from which it appears that the filing of these income taxes as stated by these gentlemen was other than filed in the regular course of business; had no connection or anything to do whatsoever with aiding or abetting of Johnson's attempted evasion of his taxes for the years 1936 to 1939.

Mr. Callaghan: The further general objection, if the Court please, they are all immaterial to the issue involved here in this lawsuit.

Mr. Hess: The bill of particulars on Mackay commences at Page 62, and up to Page 65, nothing is said about these returns in that.

Mr. Campbell: Paragraph 5 of the bill of particulars does refer to Mackay, your honor.

Mr. Hess: Part 5?

Mr. Campbell: Yes. I think Paragraph 5 of the bill.

The Court: What page is that on; do you know?

Mr. Callaghan: Part 5 of the bill begins on page 10. I am certain there is no reference to Mackay nor income tax returns filed by the defendant.

Mr. Campbell: Part 6. I was in error. Part 6 142 of the bill names Mackay, at the top of it.

Mr. Callaghan: Where does it charge in any part of the bill that Mackay filed income tax returns as an aider and abettor?

Mr. Hess: Has your Honor come to that point they raise there on Page 13?

The Court: Yes. I am reading it.

Mr. Hess: It says, "False and fraudulent income taxes," referring to Johnson's; not aiders and abettors as charged in the first four counts of the indictment. Those are not ours.

Mr. Campbell: May I make a general observation at this point, your Honor?

The Court: Yes.

Mr. Campbell: With respect to all of these returns offered here, these various individuals—as the McNeil case said, your Honor—I think it is 84 Fed. 2nd—I think it was the McNeil case—containing a charge in there of a similar nature to that here, when the Government offers any testimony, it undertakes the responsibility of connecting it up at the end of all testimony, so that when all of the

testimony is in, your Honor can determine from the pertinent facts whether there is that connection.

With respect to each of these returns, I submit that an examination of them will not show that the income reported by the various defendants—that the source of that is not contained in any of these returns, whereas the law says they shall file returns, stating particularly the source of the gross income.

It is our position that by filing this type of return, it tended to conceal the true source of their income, thereby aiding and assisting the defendant in covering up.

Mr. Hess: If the aiders and abettors here are being charged with—

Mr. Campbell: I submit that the time to pass on any of the Government's testimony is to see whether there 143 is any connection.

Mr. Hess: I think the time to pass upon any exhibit is at the time your Honor is in better position to consider it, and we are in better position to submit our theories.

The Court: You may take a short recess, ladies and gentlemen.

(The following proceedings were thereupon had out of the presence and hearing of the jury:)

Mr. Hess: Now, the Government set out, among other things, that their means of aiding and abetting was the filing of certain income tax returns for the years 1936, '37, '38, and '39, but as to Mackay, your Honor, no mention is made of that at all.

Mr. Campbell: As to the bill of particulars itself, I admit there was no statement contained that he had filed these returns. It was inadvertent, I suppose, but paragraph 6 does make a general statement with respect to all of the defendants; that they managed and operated various gambling houses for the defendant Johnson, concealing the true source of that ownership, and it is evidence tending to show that allegation, and it becomes proper under the bill.

Mr. Hess: We might just as well not have a bill of particulars, if they are going to stretch the meaning of the words in Part 6, on Page 13. Certainly, your Honor, the words mean that the operation of gambling houses was effected so that Johnson could file false and fraudulent returns, but not that he would file them.

The Court: Well, I think paragraph numbered 6 of part 6—

Mr. Hess: Paragraph 6, your Honor?

144 The Court: Yes. Now, what other points are made? What were the points made on Creighton?

Mr. Hess: On Creighton, which I have adopted as to all of the others and repeated later, were that it does not appear that these others which I have mentioned, including Mackay, were other than returns filed in the regular course of business and there is nothing so far in the evidence to in any way connect the filing of these documents as constituting an act of aiding and abetting of Johnson in the attempted evasion of his tax.

The Court: I think there is something in what you say but the exhibits will be received and if they are not connected up, why, they will either go out or there will be a directed verdict.

Mr. Hess: All right.

(Thereupon GOVERNMENT'S EXHIBITS R-17, 18, 19, 26, 27, 28, 62, 63, 64, 46, 47, 48, 49, 54, 55, 56, 57, 39, 40, 41, 42, 82 AND 83 were received in evidence.)

Cross-Examination by Mr. Thompson.

Some of these returns of Mr. Johnson's, on which I said I could not identify the signature, were the returns that were not made out by me, and I meant by my statement that I did not see him sign them and therefore could not know for sure whether that was his signature. As to the returns prior to 1936, identified as R-6, R-7, R-8 and R-9, none of those were made out by me. Looking at those they look like they might be the signature of Mr. Johnson notwithstanding I did not get to see him sign them. They look like it. I made out the returns for the years 1936 and subsequent thereto, R-10, 11, 12 and 13. As to all of those returns I saw Mr. Johnson sign the returns and therefore know he signed them. The first return that I made out for Mr. Johnson

was one for the year 1936, which I made out in the 145 spring of 1937. The first item up there, "Net profit from business or profession, \$145,165.70"—that was made out from information furnished to me by Mr. Johnson. He handed me a piece of paper on which he had that result, and told me that was his income from gambling that year. But there is a correction. Here is the amount that he gave me here, the amount that he scheduled was \$148,000, which included some deductions here which brought it down to \$145,000. The amount that he gave me was \$148,300, and

some expenses of \$3,134.30 indicated on here. Deducting that left this net of \$145,165.70, to which I first referred. Mr. Johnson gave me both of those figures, the gross of the income and the expenses that I was to deduct. He gave me those other figures, "Automobile used in business partly, etc.". He gave me those figures "Real Estate Taxes". And if interest paid on his loan up there on the Dearborn and Division Building appears on there he gave me those figures. In other words, all the figures that are in this return were furnished to me by Mr. Johnson.

With reference to the detail on the Lincoln Park Building, those records were computed by somebody else and furnished to me. I recollect that he got those figures compiled from his former accountant, I believe. That is the man who made out these others, known, so far as I know, as Mr. Brantman. They were brought in to me, and from the information brought to me I compiled this income tax return as I understood it, according to the requirements of the Department of Internal Revenue. There is nothing in there about Sunny Acres Farm in that return for 1936. There is nothing in there about Bon Air Country Club for 1936. I don't know if he had a farm in 1936. The first information he reported to me regarding the Sunny Acres Farm was in the year 1937, referring to R-11, the return for 1937, and the return for 1937 shows the results of the operation of that farm. There is a schedule attached. I kept the 146 books out at the farm. Mr. Johnson employed me to set up the books and keep them out there. I was out there personally. He did not give me any instructions about how to keep these books out there at the farm. I followed my own system in keeping the accounts of the Sunny Acres Farm. I did not suppress any facts regarding the operation of that farm. I reported the truth as to all expenses and receipts of that farm and the books that were kept at the farm were kept by me. There were no instructions from Mr. Johnson to monkey with books and when I came to make out his income tax return I made the return truthfully, from the books which I had kept at the farm. The books, as reflected in this income tax return, just show the operation of the farm, receipts and disbursements, currently. If he sold any cattle or hogs or poultry or dairy products I put it on there as receipts and if he bought any cattle for feeding purposes I put the cost of the cattle and the cost of the feed on the books. The cost of the cattle would be capitalized.

I capitalized that. When he sold the cattle, whatever the difference was between the purchase price and the selling price, less the cost of feeding them and less the labor of feeding them was the profit, and that was what I reported. There is no mystery about the Sunny Acres books or reports. It shows on this that Mr. Johnson, in the income for 1937, had some interest on some loans that he had outstanding. He received \$2,065 interest on these outstanding loans. I do not know how long these loans had been outstanding or anything about them. I got the figure from Mr. Johnson. "Rents received, \$16,461.63" appearing on the return are shown by the schedules as the net of the rents received. The schedule attached shows the gross receipts, and then when the necessary deductions are made this is the final result. The necessary deductions, depreciation, etc., taken off. I believe, in round figures, the gross rent was \$42,000 here before we took off for depreciation. The 23,000 or \$25,000 that we took off was expenses and deductions. It all appears right on the return, for the year 1937. The source of the \$258,375 that appears on the front page does not happen to be specified on here.

From my experience in the department of Internal Revenue of the United States Government, the returns were accepted without specifying the name of the business, and I made this out in accordance with the practice which I have followed in my seven years with the Government service. I was working in the Internal Revenue Department here in Chicago.

The figure of \$258,375, which were total receipts from the business or profession, was the gross amount reported to me by Mr. Johnson, and then there were deductions of \$3,134.30 for expenses, leaving a net of \$255,240.70, which is the item that I have got on the front here. The loss of \$26,023.41 is on the farm. On the farm he lost, and on gambling he won, according to his report to me. In 1938 Mr. Johnson still reported interest on loans and also rents on property owned. He designated on that return that he was a "Speculator". He made \$106,400, less deductions \$3134, making \$103,265.70. He told me he made that money shooting craps, gambling. I would say I designated it as "Speculator". I believe I indicated to him that that was quite all right for him to indicate that as speculating, and I put the word "Speculator" in there. Mr. Johnson did not put it in there. He lost \$22,414.42 on his farm that year.

There is a schedule attached, showing the process by which I arrived at that loss, and that shows that he bought and sold and fed, and otherwise carried on the usual things that you do on a farm. That includes depreciation also. Depreciation taken was \$8,352, so that the actual cash loss from operating on the farm was about \$14,000. Depreciation was not a cash item—it was a bookkeeping item. That is a reduction in the amount of capital that a man has 148 at the end of the year. It does not take any money to take care of the deduction except as a bookkeeping entry. These figures with respect to Sunny Acres were taken right off the books that were kept out there at the farm, and they are true and correct. I truthfully kept the books, as far as I know. Mr. Johnson never told me to keep them any other way except true. No other defendant, as far as I know, has any connection whatever with Sunny Acres farm. I do not know of anybody, to my knowledge, that had any connection with it except Mr. Johnson. The 1939 return correctly reports what Mr. Johnson reported to me. He reported interest on loans as well as rents received from the property owned, and those figures were all supported by schedules attached to the return. I did report on the property at Dearborn and Division. I got my information from the returns of the expenses and receipts of the General Mortgage Co. They were the managers of the property. Mr. Johnson told me where to get my information from that building. He reported to me that he made \$256,710.00 in his other business that year. I would say it is the net. That would be the gross also. For that particular year he didn't take any business expense in that particular field of business. There is an expense item on the return of \$950. It is accounting expenses. That is accounting for making up his returns and otherwise keeping his books. It is not deducted from the gross income item, but it is shown here in the deductions. I deducted it from the totals of the several grosses and nets there on the first page. I indicate on the 1939 return that his business was speculator and farmer. The farm showed a loss of \$27,441. after depreciation. The amount of depreciation was \$7100., so that there is about \$15,000. net loss from farm operations that year. I would say there is approximately 800 acres out there on that farm. The general character of the business that Mr. Johnson carries on at Sunny Acres is raising stock.

He buys and feeds and breeds cattle and also raises 149 cattle. He runs a dairy out there, sells dairy products.

He also runs a poultry farm out there—sells dressed poultry. The item of return for dressed poultry for 1939 was \$7,079.80, sold off the farm in that year.

I have known Mr. Johnson quite a while. I have worked for him in 1927, prior to the time of my going with the Government. I did not seek his business of making out the returns after I went back in private practice. He came to me. I do work for other people besides these defendants. I make out income tax returns for other clients. I would not say I keep books and records for them. I do not have anything to do with keeping accounts for other people besides Mr. Johnson out there at Sunny Acres. I have something to do with sales taxes, gasoline taxes, unemployment taxes and social security. I do have clients that I serve in connection with these reports that must be made to the state in payment of excise taxes.

Redirect Examination by Mr. Hurley.

I worked for the defendant Johnson in 1927 at the Lawn-dale Kennel Club Dog Track. I worked there as long as they operated—I believe three or four months. Mr. Wait was with Mr. Johnson on that dog track. That is the defendant Wait here. I done the book work, checks, and so forth, out there. I had charge of all the books. There were no other accountants there besides myself, to my knowledge. There were no figures on the farm books showing income from gambling. All of these schedules that I have referred to, so far as they are concerned, they show only the buildings and the farm. There is no schedule about where this \$258,000. in 1939 came from. There were no records submitted to me such as I have at the farm, to get that income figure—the piece of paper I have described—no books and records, no cash books or receipts and disbursements on

that item, just a sheet of paper showing the amount, 150 with the amount written on on there by Johnson. I

did make the returns of Creighton, Sommers, Hartigan, Wait, Flanagan, Kelly and Mackay. The figures that are shown on there were the figures that were given to me by the different men that I have named. That was the only information I had so far as that information was concerned—was what those taxpayers that were making those returns told me. I had no discretion in making those returns.

I got the item \$3,134.30 on Government's Exhibit R-10 right off this attached schedule. That includes an auto used in business and business expense. That is for the year 1936. The same auto expense is shown on Government's Exhibit R-11. The amount is \$3,134.30, the same as the year before. Line 16 on Government's Exhibit, R-12, running, repairs and other expenses, item \$3,134.30, the same figure that is shown on the previous return, that amount is deducted from the income shown as speculator, \$106,400. '39 is the year that shows that income to be \$252,720.53. That was given to me in a figure. He told me it was from shooting craps—I do not know if he stated exactly in those words. It was gambling—he did not tell me where he gambled. He did not say whom he gambled with. All he told me was that it was income from gambling. I prepared the returns in evidence of the defendants Creighton, Hartigan, Sommers, Kelly, Flanagan and Wait. I believe Creighton called me to prepare his returns. He had not known me before he called me. He called me up and said he wanted to see me. I called him up. He left his number and told me he wanted to see me. I did go to see him. I went to 63d and Cottage, I believe. It was a gambling place. I went to the second floor, a gambling establishment. There were crap tables and card tables there. I did not stay long enough to see anything else. I did not say anything about who recommended me. I did not say anything at all about how he happened to call me. He asked me to make up the 151 return. We sat down and made it up. I made the return right there—I could not say how long it took—I would say about an hour or so. I believe the defendant Sommers called me to prepare his return. I had not known him before he called me. If I remember right, I believe I first filed a return for Creighton in the year 1937. When Sommers called me he left a number. I called him. He wanted to see me. I saw him at Lawrence and Kedzie. There was a gambling establishment out there. I saw Sommers at the gambling place. There was gambling equipment there in that room that I went into. There were card tables, crap tables and roulette, I believe. Sommers did not say who told him to call me about this return. I did not ask him. He did not mention the name of any one who recommended me to prepare the return. I went in and met him. I made out his return. He furnished whatever records he had at the time I made it out. I believe there are

some restaurant records in that case. He gave me the restaurant records—I do not think any other records. The name of the place out there was the Horse Shoe. I was out at the Harlem Stables, I believe, making out returns for a couple of the boys there. Hartigan saw me doing it. He came over. This was at the Harlem Stables. I had not met Hartigan before that. He did not call me up and ask me to come out there. A couple of boys I saw out there asked me to make up their returns—I do not remember what their names were—they were employees—this was in the Harlem Stables. I go out there once in a while—I just happened to be out there. Somebody asked me to prepare an income tax return. A couple of the boys out there asked me to make up their returns. I had what records he gave me—I can't recollect what records he gave me—I do not think a regular set of books, although if I see the return maybe I can recollect. Government's Exhibit R-54, 55, 56 and 57 were from figures given by him—just one figure as to the income.

152 I testified that I prepared the defendant Flanagan's returns, Government's Exhibits R-46, 47, 48 and 49. Mr. Flanagan gave me a call on the telephone. I had known him casually before that. I called him with reference to that telephone call. He said he wanted to see me. I saw him after that at 4020 Ogden Avenue. I believe it was a gambling house. It was on Ogden Avenue I know that. We went into his room there and sat at a desk. This happened to be in the morning. I don't know how much was in the room. There was everything like a regular bookie joint—nothing else that I noticed. I believe the first return I prepared for Flanagan was in 1936. I do not think I ever prepared any return for Flanagan before that. I prepared his return when I went into this room at 4020 Ogden Avenue. I prepared it from figures he gave me. He did not submit any books or records. He put some figures down there and said, "Here it is. Here is what I made". He put down one set of figures, I don't know where he got them. I did not have any work sheets I used in preparing his returns, and that is true of the years '36, '37, '38 and '39, all of those returns prepared for Flanagan. As stated, I prepared those returns at 4020 Ogden Avenue. I believe it took me about three-quarters or a half hour. There were three copies to be made. The figures I placed on these returns, Government's Exhibits R-46, 47, 48 and 49, are re-

turns for the years '36, '37, '38 and '39, were supplied 153 to me by Flanagan. I could not tell you how large the paper was Flanagan gave me, from which I prepared the return. I could not recollect whether it was an ordinary sheet of writing paper, but everything that was on this return was on the paper that Flanagan gave me. That is true of all the returns, the ones for '36, '37, '38 and '39. The same procedure was followed each year. I made the return for 1937 at the same place, I believe 4020 Ogden. It took me the same time, about a half hour or three-quarters. I obtained the figures on Government's Exhibit R-47 from Mr. Flanagan.

Mr. Thompson: If the Court please, I am objecting to this testimony that has been going in about these particular returns. I thought maybe he was going to make some connection. I object on behalf of Mr. Johnson to any testimony regarding the making up of returns of the other defendants; no connection with Mr. Johnson, showing that he had any relation to it.

The Court: I am receiving it on the understanding that it will be connected up.

The Witness: I prepared Government's Exhibit R-48, income tax return for Flanagan for 1938, I believe at the same place, 4020 Ogden. I obtained the figures placed on that return from Mr. Flanagan. The figures were on a piece of paper of some kind. The figures placed on that return by me were the figures given to me by Mr. Flanagan.

I prepared Exhibits R-17, R-18 and R-19 of William P. Kelly.

Mr. Thompson: If the Court please, so I will not be required to interrupt, may my objection on behalf of Mr. Johnson as to all of these other individuals' returns stand without repeating it?

The Court: Yes.

The Witness: Mr. Kelly called me to prepare Exhibit R-17, income tax return for the year 1937. I had known 154 Kelly before that, since about 1927. I first met him at the Lawndale dog track I spoke of before. Mr. Kelly called me on the 'phone at home. He wanted me to come over and see him. After that 'phone call I believe I went over to Dearborn and Division. I went into a building there and saw Mr. Kelly. He talked to me at that time. He asked me to prepare the return. I did prepare a return there at that time for Mr. Kelly. I got the information to prepare

that return from him. I believe he marked it on a piece of paper. He did not submit books and records to me from which to prepare the return. All the figures on Government's Exhibits R-17, being the individual income tax return for W. P. Kelly for 1937, were obtained by me from Kelly. I believe Government's Exhibit R-18, individual tax return of William P. Kelly, 1938, was prepared at the office I was working at. He got in touch with me with reference to preparing that return. He said "I am ready to get my return made out. I want my return made out". He met me at the office, 523 South Green. It took me about a half an hour or three-quarters to prepare that return. I got the information with which to prepare that return from him. I believe he marked it down there—he had a piece of paper of some kind. There were no books or records he submitted from which to prepare the return. The figures and the information contained on that return was information that I received from the defendant Kelly. I believe I prepared Government's Exhibit R-19, the individual income tax return of William P. Kelly for 1939 at his home. He got in touch with me. He says, "I want to come over. I want to make out my return." When I went to his home to prepare the return he gave me the figures—I do not know what form, but they were probably on a piece of paper, and there were no books or records from which to prepare the return. All the figures and the information contained on that return, Government's Exhibit R-19, were obtained from Kelly.

155 I prepared Government's Exhibit R-27, the return of Reginald E. Mackay, for the year 1937. Mr. Mackay got in touch with me at my home. He said he wanted to see me. I had not known Mackay before that. When he called up he asked me to come over, down to his place of business. He told me who he was—he said, "It is Mr. Mackay", and to see him over at a certain number. I do not remember exactly the number, but I know it was out on Milwaukee Avenue near Cicero. I did not know the name of the place. My recollection is that the building is a sort of a bank building. I know now that it is the old Portage Bank Building. I saw Mr. Mackay when I went into that building. He took me into his office and made out the return. I went through the first floor room to get into that office. I did not see much in that room, no action or anything like that. I did not see nothing there—it was an empty room—some sheets hang-

ing around there and boards—horse racing sheets, I believe. I did not see anything else. I did not go into any other room there than that room I described, and the office. I did have a conversation with Mackay at that time. He says, "Prepare my return"—I don't just recollect whether he had any books or records there. I prepared the return from whatever information he gave me. The figures and information contained on Government's Exhibit R-27, being the income tax return for Reginald E. Mackay for 1937, were supplied to me by Mackay.

I believe I prepared Government's Exhibit R-28, the income tax return of Mackay for 1938, at the same place, the building that I have described at Milwaukee and Cicero. I received the information and figures contained on Government's Exhibit R-28 from Mr. Mackay. I do not know just what form that information was in—it must have been on some form. I don't think they were verbal. There were no books or records submitted to me from which to prepare the return.

156 Referring to Government's Exhibit R-26, being the income tax return of Mackay for the year 1936, line 1, "Salaries, wages, commissions and fees", the writing "Various establishments, \$5,475.00" he said that is what he made working at different places. I don't remember if he told me what the places were—I don't think I asked him.

With Government's Exhibit R-82, the individual income tax return for the year 1936 of the defendant Wait, I believe was prepared at his home. He got in touch with me. He said he wanted to see me, when could I see him. After that I went there and made up his return from information furnished by him. I couldn't recollect what form that information was in. I would say it took me about an hour to prepare that return. I received the information from Mr. Wait.

Referring to Government's Exhibit R-83, being the individual income tax return for E. H. Wait for 1937, I believe I prepared that at his home. He got in touch with me. There were no books and records. I received the information from Mr. Wait.

In addition to the returns I have testified about here to having prepared, I believe I did prepare returns for one Bernard E. McGrath.

Q. Where did you prepare those?

Mr. Thompson: If the Court please, we object to the

inquiry about Mr. McGrath. He is in no way connected with this that I know of.

Mr. Hurley: We expect to show he is.

Mr. Thompson: I have never heard of it. We except to counsel's statement "he expects to show this and he expects to show that".

The Court: What is the relevancy? I don't know. Objection overruled. What is the relevancy?

Mr. Hurley: We expect to show that this man was one of a group that worked in these places. This man took 157 care of all their books and business.

The Court: Objection overruled.

Mr. Hurley: An employe.

The Court: Overruled.

Mr. Thompson: There is nothing in any bill of particulars furnished us respecting a man McGrath. He is not mentioned in any part of the indictment. We object to the examination as being outside of the bill of particulars.

The Court: Overruled.

Mr. Hurley: Q. Did you prepare any returns of Bartley H. Berg?

Mr. Thompson: I object.

The Court: Unless you advise me to the contrary I am assuming that you expect to make the same showing with respect to these persons.

Mr. Hurley: That is right.

The Court: Objection overruled.

The Witness: I did prepare returns for Bartley H. Berg. I made those returns where he worked—I could not recall where he worked in 1936. I do not know what type of place I met him in. The return, I believe, will show on the back wherever he was employed.

Q. Did you file the return or prepare returns for one Frank H. Vase?

Mr. Thompson: The same objection to this person they now name, as being outside of the bill of particulars and no mention in the indictment, no connection with the defendants as far as his record shows.

The Court: Overruled.

The Witness: I don't recollect the name Frank H. Vase. I believe I prepared the return for Charles L. Smetana.

Mr. Thompson: The same objection to that person.

158 The Court: Overruled.

The Witness: I don't recollect where those returns

were prepared. I believe he met me at different appointments—I would not just be able to tell you at this time where the appointments were. I don't believe they were at my home. I believe he got in touch with me. I had known him casually before the first time he called me. I had seen him in the different neighborhoods at my locality and vicinity. I would not say in the adjoining ward or so. If the return shows it, I would know that was Smetana's business.

Mr. Hurley: Did you prepare returns for one James E. Hanley?

Mr. Thompson: We object to any inquiry about returns of this person named on the same ground. Here is no mention of him in the pleading, no connection with the defendants shown.

The Court: Overruled.

The Witness: I believe I did. They were prepared wherever he worked. I could not specify at this time where I met him. I could not swear whether it was the North side or South side.

Q. Did you prepare returns for Albert J. Kallus?

Mr. Thompson: We make the same objection, your Honor.

The Court: Overruled.

The Witness: I believe at 63d and Cottage, at Mr. Creighton's place. I don't know what he called the place, offhand. I believe Kallus was at Creighton's place at the time that I was there. I don't recollect just who else was there. I made up Kallus' return when I met him at Creighton's place. He asked me to make up his return. I couldn't tell you whether or not Creighton was there at that time.

159 Q. Now with reference to Ralph Moss, did you prepare returns for him?

Mr. Thompson: We make the same objection, Your Honor. It seems to me we are getting away from the promise.

The Court: Overruled.

The Witness: I believe I did. I could not tell where I made those.

Q. Did you prepare the return for Frank J. Villum?

Mr. Thompson: The same objection.

The Court: Overruled.

The Witness: I believe I did. I prepared those returns, I believe, at 4020 Ogden Avenue. I believe he called me and wanted me to meet him there. I believe I did

meet him at 4020 Ogden Avenue. I don't recollect who else I saw there at that time.

Q. Did you prepare returns for Claude Sullivan?

Mr. Thompson: Same objection, your Honor.

The Court: Overruled.

The Witness: I don't recollect the name. If my signature is on there I prepared the return.

Mr. Hurley: Did you prepare returns for Roy Love?

Mr. Thompson: The same objection.

The Court: Overruled.

The Witness: I believe I did. I don't remember where I prepared those returns. I could not recollect the type of place where I prepared the return.

Q. Do you recall preparing returns for McGrath?

Mr. Thompson: The same objection.

The Court: Overruled.

The Witness: I believe I did. They were prepared, I believe, at the place wherever he worked at. I don't recall exactly where the place was. I don't know just exactly what type of place he was working at. It all depends where he worked at. He was not in the grocery business. He worked in a bookie place or whatever it may be. I believe he may have worked at 4020 Ogden Avenue.

Q. Did you prepare returns for Gordon M. Oglesby?

Mr. Thompson: The same objection.

The Court: Overruled.

The Witness: I don't recollect the name.

Mr. Hurley: Did you prepare returns for William A. Barre?

Mr. Thompson: The same objection.

The Court: Overruled.

The Witness: If my signature is on there I prepared it. Looking at Government's Exhibit, R-107 for identification, I did prepare returns for one William A. Barre.

Q. Now, with reference to these names which I have asked you whether or not you prepared returns, when was the first year that you prepared returns for those men I have enumerated?

Mr. Thompson: If the Court please, without repeating our objection, we object to any inquiry about any of these returns under these names not mentioned as aiders and abettors, and not mentioned in the bill of particulars.

The Court: Overruled.

Mr. Thompson: And no connection has been shown and a connection ought to be shown ahead of proving the details.

The Court: Overruled.

The Witness: Referring to Government's Exhibit R-107, this was prepared in the year 1937, the return for the year 1936. I could not say very well as to what year I started to prepare returns for the other men. I don't think it was before 1936. I believe it was after 1936. I did not inquire as to who prepared returns for those men in the years previous to the time I prepared 161 them. I don't know who did. I know William Brantman. I would not know whether or not he prepared them for those years.

I am now an employee of the defendant Johnson. I work at the farm, a part time job. The rest of the time I do accounting or income tax or other tax work mostly. I spend about three or four days a month working for Johnson, some at the farm and some at home.

Q. What is your compensation for that work?

Mr. Thompson: I object to that as immaterial.

The Court: Overruled.

The Witness: There is no set compensation for that. I work four or five days for him. That is about the only way I determine that. I have no other work on the farm except this accounting work. I was employed by the Government at one time in the Revenue department, as a deputy collector. My duties were to investigate all the returns different cases that may be given to me. They were various types. The nature of my investigation work was regarding incomes and returns filed and some that were not filed. I would spend my time in the field. Whenever they requested me to spend it in the office I spent it in the office. I could not say approximately how much time that would be. If you are assigned to office duty you stay in the office; if you are assigned to the field you are out in the field. I was employed as a deputy collector for six or seven years.

Q. What was the occasion for your leaving that employment?

Mr. Thompson: If the Court please, we object to this as altogether immaterial. They can't very well impeach their own witness. They produced him; we didn't. That couldn't possibly have any bearing on any issue in this case.

The Court: I think he may answer.

The Witness: I believe it was the change of administration.

I would say I helped to make out and prepare approximately one hundred returns in 1936, about the same every year. Some were employees, some business people, different types. Some were in the gambling business. I believe there were a few there other than those I have named here. I don't recall if Mr. Hartigan gave me a set of books from which to make his returns. I have no recollection of that at the present time. As to Mr. Sommers, he did give me a set of some kind of books, from which I took figures to make his report. Mr. Sommers did, but as to Mr. Hartigan I do not recollect. I believe the first year I made a return for Mr. Creighton was in '37. When I made these reports I had all the information on a piece of paper that they gave me. Mr. Flanagan gave me all of the information that I put on the return on a piece of paper. He did not include the occupation he was in—I believe I knew that. I knew he had a gambling parlor in '36. That was true of 1937, 1938 and 1939. I asked him if he was a citizen of the United States and whether he was married. I do not recollect if I asked the question whether he operated on a cash receipts and disbursements basis or an accrual basis. I put down on Exhibit 46 that he was on a cash basis and that was not on this paper that I say he had, from which I got the information for the return on 46. I also put down he was a speculator. I did not know that from the piece of paper. I knew he was a gambler, but I marked down speculator. I have been a notary public since I have been twenty-one years of age. I am fifty years old now. I do not recollect if I inquired of Mr. Flanagan for the year 1937 as to his occupation or profession at that time. If the place is a blank on the back there it might have been an oversight on my part—I ~~did~~ know what it was. In 1938 I marked it as speculator. In 1939 I marked it as gambling. In making out these returns there was nothing said or done by Flanagan to conceal the line of business he was in. There was nothing said by him, or done, that I saw while I was making—with respect to these reports to conceal any of his income or operation expenses.

I was at his place of business at 4020 Ogden Avenue. There were no employees there at this time. He might have had some, I don't know. I was not employed by

Mr. Flanagan in connection with making out any other tax returns either for the Government or state. I know nothing about the making out of the social security. I believe he did make out and prepare some. I did not see the copies of the social security return or social security book. I did not ask him for it. I do not recollect whether he was making such a return. In all of the returns that I made during the four years for persons who might have been or were in the gambling business, it was my custom to mark down that they were speculators. Referring to R-26, purporting to be Mr. Mackay's return for 1936, I do not know where I was when I made that report. I believe he worked at some gambling places. This name written down—"Various establishments," I believe I did inquire what those were. He says, "I don't know. This is what I figured I made." I believe I made the report for 1937, Exhibit 27, at Milwaukee Avenue and Cicero. I did not inquire as to what his business or profession was when I made out this return. I believe he told me what "Other income, \$4,585.19" was. I could not really state what it was. I did not ask him how he arrived at his income here of \$1480. from business or profession. He might have said what the other income was. I don't recall whether I did ask him in this case. It **was not my custom to ask** when I made out these returns. When I went out to make these reports I did not ask for **any books or records**. I did not make any inquiry as to how he arrived at any of the figures which were submitted on a piece of paper. That is true of all these exhibits about which I have testified, except Mr. Sommers.

The notation appearing "Compiled from taxpayers' records" on Exhibit R-39, purporting to be the income tax of Mr. Sommers for 1936, is in my handwriting.

Referring to Sommers, Exhibit R-40, the second page under "Explanation of Deductions", "Light and power, \$1900" and "Rent, \$485", and various items is in my handwriting and I got that from his records.

I never asked anybody for any books. That is not true of the hundreds of returns that I made for the years 1936, '38 and '39; wherever the taxpayer supplies books, I make it up from the books. If he did not voluntarily give me some sustaining records for the figures I made no inquiry. In each instance I swore or affirmed that I have prepared the return or the schedule and that it is true and correct, and-a complete statement of all informa-

tion respecting income tax liability of the person or persons for whom the return had been prepared, of which I had any knowledge. I made no effort to secure any knowledge other than what was given to me on a piece of paper.

Q. As a former Internal Revenue man, you knew that certification was required in the regulations, where anyone helped a tax payer to make out a return, to request records and certify that you helped make it out and that it is true and correct to the best of your knowledge, and contains all of the information to the best of your knowledge?

A. I believe that is compulsory.

My information is that the occasion of my leaving the Government's service was change of administration. I believe I signed my resignation when I went in. I had various supervisors. I believe the first Collector when I went in was Mabel Reinecke. I believe Carter H. Harrison was one, and Van Meter. I left a very short time after Mr. Harrison came in as Collector. No charges were filed against me, to my knowledge. I believe I would have had knowledge if they had been filed.

WALTER A. SOMMERS, recalled as a witness on behalf of the Government, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Walter A. Sommers. I have previously testified in this case. I am special agent in the Internal Revenue service. I had a conversation with the defendant Johnson in November, 1939, which took place in Room 284 of this building. E. H. Wait, Clarence L. Converse and part of the time Frank Clifford, Internal Revenue Agent.

Q. Now will you state what was said to you about the defendant Johnson on that occasion?

Mr. Callaghan: I object to that, if your Honor please, on behalf of all the other defendants, a conversation in November, 1939.

The Court: Do you undertake to connect it up as against the other defendants?

Mr. Plunkett? Yes, we do.

Mr. Callaghan: If your Honor please, certainly as to

the proposition that a conspiracy was in existence to defeat and defraud the United States of income taxes for the years 1936, 1937 and 1938 this conversation would be inadmissible.

The Court: Not necessarily. It can be only admissible against the other defendants on the theory that the conspiracy exists and that this is a conversation in pursuance of the conspiracy.

166 Mr. Callaghan: That is right, your Honor.

The Court: If it does not tend to show that it is not admissible against them.

The Witness: I asked Mr. Johnson who owned 9730 South Western Avenue. Mr. Johnson said that William Goldstein had acquired that property for him, that he owned it, and that he had deeds for it, which he had not recorded. I asked him who built the building. He said that he did not know, that Joseph J. Nadherny had charge of the construction of the building, and that the information could be obtained from him. Mr. Johnson also said that he owned the Bon Air Country Club and that Roy H. Love was in charge of construction there and at his farm. Nothing was said by the defendant Johnson on that occasion concerning whether or not Skidmore had any interest in these properties. I asked him. Mr. Wait said that he operated the Dev-lin Club at Devon and Lincoln Avenue, on which he had arranged for the erection of a brick building, that he operated this club for a short time, turning the lease over to Jack Sommers for a consideration of \$5,000. Mr. Wait also stated in that occasion that he had the gambling privilege at the Villa Moderne and he also assisted Mr. Johnson at the Bon Air Country Club. Mr. Johnson and Mr. Wait were told that we might want them to appear before the Grand Jury and that it would be better if they gave me their addresses, instead of keeping them waiting around the building here. If they would give me their telephone numbers, and would be available on call, that I thought that could be arranged. Mr. Johnson gave me his telephone number at his house, 4224 Hazel Street, Buckingham 9500. He also gave me his telephone number at the farm, at the Cutten estate, as Downers Grove 1089.

167 *Cross-Examination by Mr. Thompson.*

This conversation took place on November 3, 1939, in Room 284 in United States Court House. E. H. Wait, Clarence L. Converse, Frank J. Clifford and myself were present. Mr. Wait is one of the defendants here. As far as Mr. Johnson is concerned, my recollection is that I wrote him a letter and asked him to come in, and he did come in. Mr. Wait was not under Grand Jury subpoena. Mr. Converse arranged for his appearance. I did not have Mr. Johnson under a Grand Jury subpoena then. I do not know, but I believe the Grand Jury was in session at the time of this conversation on November 3, 1939. I told Mr. Johnson that I might want to use him as a witness before the Grand Jury. We were not particularly investigating him. Mr. Converse may have been investigating Mr. Wait at that time—I was not. When I was asking these men all these questions about these different things I did not caution them about their constitutional rights. They did not have any lawyer there at that time. I think I have substantially told everything said in that conversation.

EDWIN WENDT, called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Edwin Wendt. I live at 4728 North Lawn-dale Avenue. I am an engineer for O. A. Wendt Company. Formerly I was with Wendt & Chrome Co., where I was employed between 1933 and 1939 as an engineer. The president of the company is my father. I know the defendant Jack Sommers—I would say eight or nine years. I first met him at the Club Senrab. It is on Kedzie near Lawrence.

I saw him probably three or four times a year after 168 that first meeting with him. I would say up 'til about 1935. After 1935 I saw him a dozen or more times a year. The occasion of my seeing the defendant Sommers was that I was frequenting the Senrab Club and was gambling at that place. While in the course of visiting the Senrab Club the name was changed to the Horse Shoe. I would say the change occurred approximately 1935. I

know the defendant James Hartigan by sight. I have seen him at the Horse Shoe. He was in the pay-off booth stand at the Horse Shoe when I first saw him, about 1938. After that I very seldom saw Hartigan. The defendant Hartigan and the defendant Sommers were present at the same time in the Horse Shoe.

The Court: What did you see him do?

A. I saw him going around the establishment, milling around.

Q. Give us the detail. What do you mean by "milling"?

Mr. Plunkett: Q. Was he giving orders?

A. I can't say that I ever saw him give an order, no.

Examination by the Court.

I can't say that I ever saw him give an order to anybody—I never saw him do anything. I saw him breathe. He walked around the establishment. He talked with customers. I did see him do some things. He talked to customers that came in and he talked to me when I came in.

Q. What did he say to you?

Mr. Thompson: We object to this conversation.

The Witness: Well, just the usual greeting, "Hello."

Mr. Thompson: If your Honor please, we object to this conversation as to the defendant Johnson.

The Court: It is admissible against the defendant Sommers. Go ahead, tell us what he said.

169 The Witness: Well, just the usual hello that you would strike up. He said "Hello." I answered him back the same way, "Hello." I don't remember any other details. I never heard him say anything to any of the other employees. I saw him talk to them from a distance. I can't recall right now seeing him do anything else at any time.

Mr. Plunkett (Continues Examination).

I have also gambled at the Dev-Lin. I would say it is located on Lincoln Avenue near Devon. I saw the same man, Jack Sommers, there.

Q. Was he acting or doing the same things at the Dev-Lin that you saw him doing at the Horse Shoe.

A. Yes, sir.

Mr. Thompson: If the court please, he has not seen him do anything at the Horse Shoe, so we object to that.

The Court: Yes, he saw him talk, walk and breathe, and talk to employees.

The Witness: I saw him do the same thing at the Dev-Lin as happened at the Horse Shoe.

I have also gambled on one occasion at the Lincoln Tavern. I saw Jack Sommers there. I did have a conversation with the defendant, Jack Sommers, about the first of May, 1939.

Q. Now, will you state what you said to Jack Sommers and what he said to you?

Mr. Thompson: We object to this as far as the defendant Johnson is concerned.

The Court: Well, it is admissible as to the defendant Sommers.

Mr. Plunkett: It will be connected up.

The Court: We will hear what it is.

Mr. Thompson: We except to the statement of the United States Attorney that it will be connected up.

170 The Court: Overruled,—well, you have taken your exception. Go ahead.

The Witness: I talked to Mr. Sommers regarding some work in my line at the Bon Air Country Club. I learned on that occasion that there was work in my line going on at the Bon Air Country Club. I told him that I understood there was work going on out there or that the Bon Air was putting some work in there and I wanted an opportunity to quote on it. He said he was sorry he could not do anything for me on the job, that he had evidently forgotten about me, but that there would be some more work going ahead out there at the Bon Air. He told me that I should go out there and look the job over and try to get a figure out on it. He told me that I should see Mr. Roy Love when I got out there. I did go out to the Bon Air Country Club. I saw Mr. Roy Love. I had seen Roy Love previous to going out to the Bon Air. I talked to him previously at the Horse Shoe. I would guess that I saw him probably a half a dozen times a year prior to the time I saw him at the Bon Air. He was doing what I call construction work on the occasions I had seen him there.

Q. And you stated that you had conversed with him previously at the Horse Shoe. What was the nature of the conversations that you had with him?

Mr. Thompson: I object to that.

Mr. Plunkett: Was it concerning work on the premises?

The Court: He may answer. Overruled.

Mr. Plunkett: Q. Had you conversed with Love at the Horse Shoe concerning work on the premises?

A. Yes.

Mr. Thompson: We object to that. It is the same harm as if he relates the conversation.

The Court: He may state.

171 Mr. Thompson: Not binding on the defendant Johnson.

The Court: It is admissible against the defendant Sommers, I think, and possibly against some of the other defendants. You cannot sift this all out and I cannot give an instruction to every question that is asked and answered, as to whether or not it is admissible against all the defendants.

As I said to you heretofore and I say to you now again, if you will at the proper time present an instruction in respect of conversations that you think are not admissible against all the defendants, I will give those instructions if they seem to me to comply with the facts.

Mr. Thompson: Well, we understand that, of course, your Honor, and you have told us that, but to get all of this great mass of stuff in here with no connection at all, they have laid no foundation whatever to show that these men are responsible for these conversations and actions and they are trying their case backwards.

I appreciate it is a matter of discretion for your Honor to permit it to go in before they connect it up, but I think that the proper time is when they hook somebody up.

The Court: Well, they have just fairly got started in this case. Proceed.

The Witness: When I saw Roy Love at the Bon Air he was working on the job, actually working as a working man. I did thereafter submit bids for work at the Bon Air Country Club for air conditioning work. There were two bids—one for air conditioning the casino; the other was an alteration job for existing system. The casino is a gambling place. Our company got the contract to do that work. The price of the equipment that we installed at the Bon Air on that occasion was \$7,000. That was the total price for the

172 two different pieces of work that I testified was done in the year 1939. I personally collected the money for that work. I was paid the money on two different occasions. The first occasion was probably about the 15th of May, 1939. That is strictly a guess, however.

Mr. Thompson: We object to this. There is no connection with the defendant Johnson.

The Court: Overruled.

The Witness: I was paid on the first occasion \$3,500, and on the second occasion \$3,500. Mr. Sommers paid the first \$3,500 at the Dev-Lin. That is the same place I have testified about previously. I did not take away the entire \$3,500 with me on that occasion. I took away \$2,800.

Mr. Thompson: I object to that as immaterial.

The Court: Overruled.

Mr. Plunkett: And what became of the other \$700?

Mr. Thompson: We object to that as immaterial.

The Court: Overruled.

The Witness: I paid up a personal debt to Mr. Sommers. I had owed the defendant Sommers money.

Mr. Thompson: We object to that and move to strike it out as immaterial and prejudicial to all the rest of these defendants.

The Court: What is that for?

Mr. Plunkett: It is for the purpose of showing the connection, if the Court please. It clearly shows the connection.

The Court: Overruled.

Mr. Plunkett: Q. Will you state the occasion or the circumstances under which you collected the \$3,500, this first \$3,500 you have testified about, at the Dev-Lin instead of at the Bon Air?

Mr. Thompson: I object to that as immaterial.

The Court: Overruled.

173 The Witness: The money was offered to me at the Bon Air and I asked if it would be all right if they sent it out, and was told that they would send it to my office, and in the next day or so, time elapsed, and I didn't receive it, and I went out to the Dev-Lin and talked to Mr. Sommers about it and he said to come back in a couple of days and he would try to get it for me, at least, and a few days later I went back and he had it for me. On that occasion I was told that the money would be sent to my office. I believe I left a receipt at the Bon Air Country Club for \$3,500. I am quite sure I left the receipt without taking the money. I was told that Mr. Roy Love would bring it to my office. The next time I asked if it would be possible to get a check for it. I asked Mr. Sommers if it could be arranged I get a check for the balance due our firm, and he

arranged for it at the completion of the installation and gave me the check. I turned it over to my organization. I know now whose check it was. At that time I did not pay much attention to it.

Q. Whose check was it?

Mr. Thompson: I object to that. It is immaterial unless it is connected up with these defendants.

The Court: Overruled.

The Witness: It was made out by the Lawrence Avenue Currency Exchange. That completed the payments of money owed to our company for the work I have testified was done at the Bon Air. Government's Exhibit E-83 is a contract for the air conditioning at the Casino room and is my records of our company. I see the signature on the last page—I was there when it was signed by Roy Love. I saw the same man, Mr. Roy Love, sign Government's Exhibit E-84. These contracts were executed at or about the date that appears on the face thereof. I last saw the defendant Sommers about two or three weeks ago at the Rose Bowl Florist Shop, located on Kedzie avenue near Lawrence. It is in the same building as the Horse Shoe that I have 174 been testifying about—right underneath.

Cross-Examination by Mr. Thompson.

My father is part owner of this business. The company Wendt & Krohn has been dissolved. I was not interested in the business at the time of these transactions I have been talking about. I have never been to college. I am not that kind of an engineer. I have a practical training as an engineer. I believe I know how to install an air conditioning system if it is not too complicated. I do a little gambling once in a while. I was a customer of Jack Sommer's gambling emporium. I first played at the Horse Shoe or Senrab Club at that time. That is the same one that is now called the Horse Shoe. That is at Kedzie and Lawrence. I would say I went to Mr. Sommers' Club, known as the Senrab, about three or four times a year. I would say between '31 and '35. I did not get well acquainted with Mr. Sommers during that period. I got acquainted during the period since I have known him. I just imagine that the Senrab was changed to the Horse Shoe in 1935. I am not sure of that. As far as I noticed, they were running about the same—just changed the name, so far as I know. This was

not a restaurant. There was a restaurant there. I am not sure that there was then, but there is now, so far as I know. The Horse Shoe is a restaurant now. I do not know how long it has been a restaurant—I would say probably about a year or so—maybe two years. I have seen Mr. Sommers around there all this time, 1931 down to date. On one occasion I went in there and saw Mr. Hartigan there. I saw him in the change cage, or something, that night. I later saw Mr. Sommers out at the Dev-Lin Club. That is at Lincoln and Devon. I do not know how it got its name. There is not a restaurant and floor show conducted there. It is a gambling house and Mr. Sommers was there, too.

These gambling houses were not operated at the same 175 time. As far as I remember, when the Horse Shoe was closed the Dev-Lin would be open. As I remember it, they operated one or the other alternately, and I visited whichever one was open. I confine my activities at gambling largely to Mr. Sommers' two places, the Horse Shoe and Dev-Lin. I knew Mr. Sommers by that time quite well.

I was looking for business and I heard that some air conditioning work was being done, or proposed to be done, out at the Bon Air. I had been out to the Bon Air prior to that time, so when I heard about this I asked Mr. Sommers if he could help me get some work out there, and he told me that he would try to find out what could be done. He did not then give me any work. He was going to see what he could do. He did not later report to me whether I could get the job. He never told me that I would get the job. He did later report to me that he had discussed the matter and then I went out to the Bon Air by reason of my report from Mr. Sommers. When I got out to the Bon Air I talked to Mr. Roy Love about this job and he was doing some construction work out there. After the proposition was written it was accepted. I saw Mr. Love not more than three times before I came to terms. I talked to the architect, Mr. Nadherny, on the detail work. Nadherny was out there on the job, too. Love seemed to be head of the construction and Nadherny seemed to be the architect on the job. I did not talk to anybody else, that I remember right now. I was out there two or three times in connection with this construction and finally got the contract. Government's Exhibit E-83, for identification, dated May 6, 1939, is the first contract for air conditioning the casino. The signature, C. A. Imming, was the salesman on the job. That is a proposi-

tion written in contract form that was taken out to the job with Mr. Imming's signature on it, and in contacting Mr. Love, Mr. Love signed that contract. The proposition was submitted to the Lighting Construction Company. I do not know anything about what it is. I was instructed by 176 Mr. Love to make it out to that company. I don't know whether it is a corporation, general contractors and builders, or what it is.

E-84 has to do with revamping of an existing system that was out there. That was made in the same fashion, by the same parties. After I got this job done I had \$7,000 coming, and I went out to the country club and saw Mr. Love about paying the bill. After I talked to him he sent me to Mr. Geary to see about paying the bill. I don't know what his position was—he was working on books of some kind in the office. I would say, to all appearances he was a bookkeeper, cashier, or something of the sort. I don't remember whether I did or did not hand him this bill for \$7,000. I was asking for part payment of the job. He offered to pay me in currency, \$3,500. I did not want to take it. I didn't want to carry \$3,500 in from Wheeling, so I asked them to send it down to the office. It did not come down in a couple of days, and I saw my friend, Jack Sommers, and asked him to get this money transported down to the office. He said he would try to do it and he did. I saw him later and he had the \$3,500 for me, and he gave it to me, and when the next \$3,500 came due I talked to Mr. Sommers and asked him if he could get it, and he told me what he could do for me. I did not want to carry this money in from the Bon Air. I asked him if he could see if he could get it in the form of a check or draft, and he said he would see what he could do about it, and when they handed me a piece of paper it was an order to pay our company \$3,500. I did not know then, but I know now, what concern this order was on. I found out through our bookkeeper since then. This was before I talked to the United States Attorney. I had been asked some questions by the president of our company about the payment of the job and I talked it over with our bookkeeper and he brought out the books, and

I found out how it was paid. The Government agents 177 did not ask me any questions. It is possible that they asked our president. That was the occasion for my office asking me about it. I found out from my books that this is a payment from the Lawrence Avenue Currency Exchange. It was a money order. I do not know who purchased

it. I do not know who paid for it. All I know is that Mr. Sommers handed me a money order drawn for the Lawrence Avenue Currency Exchange for \$3,500, as an accommodation to me. I turned the money order over to our book-keeper. I do not know what he did with it. The books show he received \$3,500. They show a credit by reason of the deposit of payment by the Lawrence Avenue Exchange money order. That is all there was to it. Mr. Sommers is the only man I saw in connection with that transaction.

I saw Mr. Sommers at the Lincoln Tavern. He was just breathing and walking around, visiting. That is about all. I was only there on one occasion. He was in plain clothes. I was only there on one occasion. I don't remember when—it was some years ago. It was four or five years; three years ago. I saw him once and that is all there is to it.

Mr. Thompson: We object to these exhibits, E-83 and E-84, as immaterial, as outside the issues made by the indictment and as outside of the particulars furnished in the bill of particulars, and as not binding on any defendant in this case. Assuming it is a Bon Air expenditure which the Lightning Construction Company made, for which it was reimbursed, then it is a duplication, no doubt, of what the books of the Bon Air show, which are already in evidence.

The Court: Objection overruled. It may be received.

(Said documents so offered and received in evidence were thereupon marked GOVERNMENT'S EXHIBITS E-83 and E-84.)

I have seen the defendant Hartigan at the Bon Air Country Club, in the gambling casino in '39. I was only in that room on two or three different occasions, just checking temperatures in the particular space. I believe I saw him on all the occasions I was there—I know I saw him on two different occasions. He was breathing when I saw him, the same as Jack Sommers was in the other space. I saw him on the stand, if you call it a stand—it is similar to a payout stand—I do not know what he was doing—he was just sitting up there—nobody else was up there with him. I wouldn't say that I have had a lot of experience in gambling rooms, but I have had experience in them. I do know what the purpose of the payout stand is in the gambling rooms. It is what the name implies—it pays out money

to persons who win. While I saw the defendant Hartigan in that stand I did see him pay out money. No, I have never seen him take any money in. The Horse Shoe Restaurant and the Horse Shoe gambling place are two different places. They are in the same building. The restaurant is on the ground floor and the gambling room on the second floor.

Recross Examination by Mr. Thompson.

I submitted a proposition to Mr. Sommers for his own place down there at the Horse Shoe for air conditioning. He did not accept it. I was around hunting business and I found this business at the Bon Air.

179 NORMAN ANDERSON, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Norman Anderson. I live at 4936 North Damen Avenue. I am a plasterer and have been so engaged for about twelve years. I was so employed in 1937. My other duties were the construction line mostly. Plastering, cement work, mason work, laboring. I can name some places where I was employed, starting with September, 1937. I worked at the Northland at Clark and Howard Street. I believe it was in the neighborhood of 7515 North Clark Street. It was formerly a garage. I was plastering there and wrecking, mostly wrecking. Roy Love was my boss. I met him at Lawrence Avenue and Kedzie in a shop, I believe it was 7415 or 13, on Kedzie. The occasion of my meeting was to ask him to put me to work. I contacted Mr. Love through my wife. She asked Roy Love if he needed any men and he said he probably could use a man. I was out of work at the time. He said yes, and that I should come over to Kedzie Avenue and see him there. I went to the neighborhood of Lawrence and Kedzie, and he put me to work. About five other men were working with me at 7515 North Clark Street when I started up there. There were more laborers working later on. We tore out partitions and walls. Eventually we tore all the partitions down and put in an oak floor there and made one large room of it. I was in that room after that, some time later.

I came back there and we plastered the walls. That was the last time I was in there. During the time we were working there there were men around. We came on duty at 8 o'clock and everybody had left at that time and porters were cleaning up. I saw counters and cashier's windows, tickets, mutual tickets in the place. Of course that was my opinion.

180 Mr. Hurley: Q. Did you later do any work at any other location similar to the type you did at 7515 North Clark Street?

Mr. Thompson: We object to the general questions and move to strike out all of this testimony about the Northland; it is in no way connected with any defendant.

The Court: The objection to the question will be sustained; the motion will be denied.

The Witness: Referring to the place known as the Horse Shoe, I did do a little patch work there.

Q. What kind of a place was that?

Mr. Thompson: We object to all of this detail as to what kind of place it was. That has been proved a half dozen times in this case.

The Court: Overruled.

The Witness: From my opinion the Horse Shoe was the same as the Northland room. I saw people supposedly betting on horses. I have done patch work at the place known as the D & D also within the period of the time I worked for Roy Love. Roy Love sent me to the D & D. When I went there I saw the watchman at the door. Most of these places, when I went there it was usually in the evening. I had my instructions from Roy Love what to do there, and the material and everything would be there. I would just go about my duties. There would be a man at the door to let me in. I have done work at the place known as the Lincoln Tavern, probably last year, 1939. Roy Love sent me there. I went out to a place known as the Harlem Stables and did some repair work there, and also worked

there as a shill. I worked there as a shill the first part

181 of 1939, about two months. I got the job through Roy Love. He sent me over there. He asked me if I wanted to keep working and he would keep me on temporarily while the building was slow. I worked as a shill at the Harlem Stables.

I saw a man by the name of Riley when I went to work as a shill at the Harlem Stables. They called him Pete. I

saw men in there, but I don't know them. I was sent to 182 Pete Riley. He told us our duties; to go to work. Mr.

Loy McGinnis, also a plasterer, went with me. William Schmidt was also in that crew over there. I believe I worked two months as a shill at the Harlem Stables. I worked every evening as a shill during the two month period. I believe the hours were eight in the evening until two in the morning. I saw Pete Riley there now and again. I did not keep my eye on him. I knew that he was there.

Q. Will you explain to the Court and jury just what your work as a shill involved?

Mr. Thompson: We object to that as immaterial. In fact, if your Honor please, I can't see the materiality of any of these details this witness is relating.

The Court: Overruled.

The Witness: I played at the dice game. I did not play with my own money.

Mr. Thompson: We object to this as immaterial.

The Court: Overruled.

Mr. Thompson: No connection with any defendant.

The Witness: I got the money from one of the men in the place there. As far as I could see he gave the money to the shills.

Q. How many shills were there working there when you were there during that two months period?

Mr. Thompson: We object to that as immaterial to any issue in this case.

The Court: Overruled.

The Witness: I would say eight or ten men. There were eight or ten shills working during the hours I worked up until two in the morning. I did no other work except working as a shill, working at the Harlem Stables at that time.

Q. How much did you get for that a night?

Mr. Thompson: We object to that as immaterial.

183 The Court: Overruled.

The Witness: Four dollars.

I saw the defendant Johnson at the Harlem Stables at one time when I was working there as a shill. I did not see him gambling there. I know the defendant Johnson. I see him in the courtroom.

After I worked at the Harlem Stables for a couple of months as a shill I worked at the Bon Air Country Club, doing construction work, plastering, cement work, repairing. I worked there in that construction work in 1938 after

I left the Harlem, until about July, 1939. I worked at 4020 Ogden Avenue. That was after I got through at Clark Street. I worked there during the day, doing construction work. Mr. Roy Love sent me there to work. It was a store and we did some carpenter work in there; put a grill in over the counter, shaped something like a cashier's grill which you find in a bank. We worked there about two hours. There was a man there to admit us and let us out. I worked at a place known as the Dex-Lin, Devon and Lincoln, I believe. I don't recall, but it was within 1938 and '39. Roy Love sent me there. I went there during the day. Nothing was going on when I got there. There was a man at the door to let us in. We had to cover some walls there with plywood and did some painting. I did some work on Johnson's farm. I worked on the chicken house there. Roy Love sent me out there. I did some work at a place on Monticello and Milwaukee.

The last time I worked on construction under Love was the last part of 1939. After I finished up my construction work I went to work out at DuPage County for the local union out there. After I finished the construction work at the Bon Air I did a patch job there. I worked at the Bon Air at the front door—that was 1939. Roy Love got 184 that job for me. He did not state just what the duties were until I went to work, the day I went to report for duty. I went to get a suit or a uniform before I went to go to work at the door. Roy Love sent me to do that. I got a suit at Benson & Rixon's. I got the money from Roy Love. He did not give me the money—he gave it to Mr. Melvin Koop. He gave him \$100. After Koop got the \$100. I went down to get the suit at Benson & Rixon. I went back to the Bon Air and went back to work and finished up some of the sidewalks out there and that evening, or the following evening, I reported for duty at the Bon Air as doorman or greeter. I talked to Mr. Spaggott. He told me what my duties were. He was the manager there. It looked to me like he took care of the catering work—that is the food—sort of a steward. My duties were to greet the people as they entered the door and open the door. Mr. Spaggott gave me my orders—that is to direct them to the bar, to the dining-room and open the door as people entered and open the door as they left. That is all I remember all my duties were. I greeted Mr. Johnson as he came in. Mr. Johnson invited me to dinner the night I went to work there, and told me not to accept any tips.

Cross-Examination by Mr. Hess.

Roy Love was my boss on these various construction jobs. I got my orders from him, and the other jobs I got were on his suggestion. I went to work at the House of Niles. It looked to me like a roadhouse at one time. They served meals and drinks, no entertainment. There was gambling. I don't know whether Roy Love did any work at the House of Niles. My wife was talking to him while he was eating there. He may have been supervising some work there 185 at the time—I am not sure—I was not there at the time. I do not know whether or not he was doing any of the supervising of any work at the House of Niles. I never spoke to him about that afterwards. I did not ask my wife how she knew him. She knew him through some girls working there. She spoke to them about that, I believe. To my knowledge he was not supervising any work at the House of Niles. That is, my wife told me he was working there, or supervising work, I don't know which.

Mr. Thompson: We move to strike all the testimony of this witness as having no bearing on any issue in this case.

The Court: Motion denied.

LORENZO BAKER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Lorenzo Baker. I live at 5543 Prairie Avenue. I at one time worked at a place known as the Horse Shoe at Lawrence and Kedzie. I was a porter. I did cleaning up and waiting on the desks. I worked there from eight in the morning until eight at night. I got the job through the head porter who went to work there in 1930 or '31. I worked there five or six years. I worked under Henry Armsted. He was the head porter. I saw the other people that worked there and the guests. The place was located on the second floor. It was a regular horse book and what not. There was gambling equipment there, such as roulette wheels and crap table, horses and black jack. I was getting \$12. a week.

Mr. Thompson: We object to that.

The Court: Overruled.

I know a man named Hartigan. I saw him in the 186 Horse Shoe in the later years—I think '35 or '36. He was one of the bosses. I saw a fellow there named Jack Sommers. I saw him there about the same time. Mr. Sommers was there first and then Mr. Hartigan came. Mr. Sommers was the cashier. I don't know what he was doing, regular routine of a cashier. He did not have much to do there. He checked the books and what not. At times he was handling money. I see those men here in the courtroom that I knew out there at the Horse Shoe (indicating the defendants Hartigan and Sommers). I worked as a porter at the Lincoln Tavern after I worked at the Horse Shoe, about two or three months, something like that. That must have been the latter part of '36. I see these men here in the courtroom that were out there at the Lincoln Tavern when I worked there (indicating the defendants Hartigan, Sommers and Kelly). I saw Hartigan walking around at the Lincoln Tavern. Sommers did the same thing. Kelly was walking around.

I worked at the D. & D. I saw Mr. Kelly and Mr. Sommers and Mr. Hartigan once in a while at the D. & D. Mr. Kelly was my boss at the D. & D. I worked there three years. The last day I worked there must have been September or October, 1939, when the D. & D. closed up. Mr. Kelly asked for me to go to work at the D. & D. I don't know whom he asked. He just told me to come down and go to work. I know a man named Roy Love. I seen him at the D. & D. I seen him at the Lincoln Tavern, too. In traveling around I seen him. I saw him at the D. & D., fixing the place up, painting and what not. He did the same thing at the Lincoln Tavern. I saw him very seldom at the Horse Shoe when I worked there. If anything happened, any work to be done, he did it. I did have something to do with moving equipment. All of it was dismantled, such as tables, chairs, etc., and moved it, such as tables, chairs, and so forth. I would dismantle crap and black jack tables. The first moving

I did was about 1936, from Kedzie & Lawrence, the Horse Shoe, crap tables, black jack tables, chairs and equipment were moved to the Lincoln Tavern. I think Roy Love told me to move that equipment. I did not move any equipment other than that from the Horse Shoe to the Lincoln Tavern.

I worked at Tessville. That was between 1936 and 1937. I did the same type of work there. I did not have anything to do with the moving of the equipment into or out of

Tessville. The name of the place in Tessville was the Dev-Lin. I have seen Johnson at one of the places I have described. I see him here in the courtroom (indicating the defendant Johnson). I seen him at the D. & D., not very often. If I did see him any place else I did not know him then. He was walking around when I saw him at the D. & D. I did not see him gambling. Roy Love told me we were going to move to the Lincoln Tavern after I was at the Horse Shoe. We just got on the truck and went right out there. We went the same way at the time the Lincoln Tavern to the Dev-Lin. Same thing, tables, chairs and regular equipment, black jack tables, crap tables, chairs. There was no part of the Horse Shoe Restaurant moved out to the Lincoln Tavern when I went out there. I do not know a thing about the restaurant—I did not go out there. Roy Love directed us in setting up this equipment after we moved it from the Lincoln Tavern to the Dev-Lin. I was working for Jack Sommers and Jimmy Hartigan at the Lincoln Tavern. I was working for Mr. Sommers at the Dev-Lin.

Mr. Thompson: No cross examination. I move to strike the testimony as not material to any issue in the case.

The Court: Motion denied.

188 ROY ROBERT MCGINNIS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Roy Robert McGinnis. I live at 4108 Kenmore. I worked at a place known as the D. & D. for about four days, as a shill. I know Mr. Kelly, here in the courtroom, that I saw at the D. & D. I went to work there, I think, in 1938. I was out of work and a friend of mine says to me I could go to work down there for a few days until the construction work opens up and then I could do construction work with Mr. Roy Love. That friend was employed there at the D. & D. After I worked there I went to work with Roy Love. That is my line of business. I am a building mechanic. I was told to go and see Love. That is all. I went there to see him and went to work. He did not say anything to me when I went there to see him. I never met the man before. The first time I met him was where

his storeroom is over there, at the storeroom at 4719 or something like that, Kedzie. I told Mr. Love my name was McGinnis and I was looking for a job, and he said all right. He never asked me where I had worked. I went from there to work at the Bon Air. They were remodeling out there and I worked out there until the club opened in May of 1938. I was doing everything in the building line. I am a plasterer, but there was not any plastering there so I was doing every kind of work, labor work. I worked out on Johnson's farm, out on Butterfield Road. There was some remodeling and repairing, and building a new house out there. Love asked me to go to the farm to work. Twenty or more men were in the crew working at the farm. I was employed there about three months. After I finished at the farm I guess I went into town and did some work on 189 North Clark Street, 7500 Block—I don't remember the exact number. That was remodeling work in there. The walls were coated with cement sand-finished. Anderson and myself done a little repair work, then went back to the D. & D. Club. I worked as a shill at the Harlem Stables in January, 1939. Mr. Love sent us out there. He says go out there and tell the man at the door that I sent you out, and they can put you to work for a few days—I have not got any work for you. We told the doorman that—I don't know what the doorman's name was—that Love sent us out there—if there was any work out there he would appreciate it very much if we could work a few days out there. I worked about three weeks. After we told the door man Love sent us over there he said "all right, come on in and I will see what we can do." He walked away. Then came back and took us over and introduced us to another fellow and he says for a few days we will work. I don't recall the man's name we were introduced to. He was a tall chap, a young fellow—I don't see any gentleman in the courtroom that I saw out there at the Harlem Stables. I don't know a man named Tony Steel working at the Harlem Stables. This place where I first met Love was a store building. There was a lot of electrical equipment there. There was some lumber there that would be used for repair work at different times. That was all that was in there. That was about 4719—I don't know exactly what the number would be on Kedzie. I know where the Horse Shoe is—at Lawrence and Kedzie. It is two doors south of that. It is the same building. This store was empty other than the articles I have enumerated for you.

I saw Johnson at the Stables two or three times out there in the evening when I was working there. I see that same Johnson here in the courtroom. He was not doing anything when I saw him at the Harlem Stables—talking to different customers that were in there. I did not ever see him gambling at the Harlem Stables when I was 190 there. I saw him once when I was working at the D.

& D. as a shill. He was talking to some customer that was in there. He was not gambling. He was not playing any of the games there.

Mr. Thompson: No cross examination, but we move to strike the testimony as immaterial.

The Court: It may stand.

LESTER CREGAR, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Lester Cregar. I live at 1028 Circle Avenue, Forest Park. I worked at a place called the 400 Club in 1936 as a cashier. I was employed on and off for probably three years. The 400 Club was a hand book. I was working for "Chick" Parcell.

I worked at the Select Club evenings. That was on Circle Avenue—I should judge on and off for two years. I shilled at the poker game. I was working there for Mr. Murdock McKinzie. I just sat there in case somebody drops out, to keep the game going until it was filled in. In other words, if somebody dropped out I took their place. The manager of the poker game would give me the money that I played in that game. The manager of the poker game was employed, too. All my time was devoted to being a shill in a poker game at the Select Club. I worked at 63d and Cottage Grove, at the Southland Club. McKenzie sent me there. I was out of work for about two months. I talked to McKenzie. He said he would see Mr. Creighton about putting me to work at 63d and the Grove. I see the Creighton that I refer to here in the courtroom. When I went to 63d and Cottage I saw Mr. Creighton. He just told me that

191 he was working a few days a week—there was not much business. We worked three or four days a week. I was cashier at the Southland Club. The work of a cashier is to figure bets and pay off.

Q. Just describe it; how did it happen?

Mr. Thompson: That is immaterial. I don't see why we need any education in the business of gambling.

The Court: Overruled.

The Witness: You have a blank sheet in front of you, where you write the numbers, 1 to 12, or 1 to 15, according to the number of horses in the race. The number of the winner, the second horse, the third, and the mutuel, is put on that sheet. I would not take money on bets. I paid them off. Money was handled by me. I was cashier for one sheet writer. I worked as a sheet writer. A man comes up and places his bet and you put the number down, whatever is on the sheet opposite the horse's name. The horses have both names and numbers. You put on there the amount that is paid. After the sheet is filled, or at the time the race is run, you tear it off and turn it over to the manager. You total up your sheet and check your sheet in with the amount of money on that sheet, and that money you turn over to the cashier with the sheet you take in. There is one duplicate made of that sheet at the time you accept the bet. There is an original and duplicate. The original goes to the cashier and the duplicate to the manager. Operating as a cashier I received one of those sheets and the money which some sheet writer had accepted. After you get that sheet made by the sheet writer you total it up and see that the right amount of money comes in. I should judge I worked at the Southland probably two months, or a little less. I was paid \$6.00 a day, paid every night that I worked. Payment was made in cash. The man that would handle the payoff gave it to me—I think his name was Butler out there—I couldn't say for sure. I was only there a short time—I don't know many of them. There were three cashiers working there, sometimes two and three, but of these cashiers there was not any one that was in charge of the cashiers. So far as I know, all operated separately. The man who had charge of the cashiers was called the manager. That was William Foley.

After I left the Southland I worked at School Street—I couldn't tell you what number. I was only there a short time—I think Milwaukee and Belmont—they come together there. I was a sheet writer at School Street. I was there probably six weeks or two months. There is not much over there. I worked for Tom Hartigan there. The nature of the business there was just a hand book. When I left School Street I went back to the 400 Club, Forest Park. I was

there until they closed—I should judge last September, '39. I was working there for "Chick" Parcell. I did work at a club known as the Proviso, First Avenue, in Maywood. I worked there a few months while it was running. The nature of my duties was cashier. I was working there for McKenzie. That is the same McKenzie that I named before. I saw the defendant Creighton at the Select Club once in a great while. He just dropped in and talked and would go out. He talked with the manager McKenzie. I didn't see him at any other clubs I have named.

Mr. Thompson: No cross-examination, but I move to strike the testimony of the witness immaterial, all of it.

The Court: What do you expect to show by this testimony?

(Following occurred out of the hearing of the jury.)

Mr. Hurley: It shows the defendant Creighton connected with the Southland; shows him out there at these spots. We expect to connect it up with the West Side spots.

The Court: Expect what?

Mr. Hurley: Expect to connect it up with the West Side spots.

Mr. Plunkett: The places named in the bill of particulars. We want to show that each one of them was a gambling establishment, and to prove that, we must prove that such place was a gambling establishment.

The Court: Motion overruled.

(Following occurred in the hearing of the jury.)

Mr. Thompson: I move to strike the testimony, particularly as to the 400 Club; no connection with any defendant here.

The Court: Denied.

Mr. Thompson: The same as to the Proviso Club.

The Court: Denied.

Mr. Thompson: The same as to the bookie on School street.

The Court: Denied.

Mr. Thompson: The same as to the Select Club.

The Court: Denied.

ULYSSES GRANT JONES, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Ulysses Grant Jones. I live at 3853 Langley. I was employed at the Horse Shoe about 1931. Roy, I believe, was the name of the person who employed me—I do not know his last name. I did, after that time, work at other gambling houses in Chicago—at Lincolnwood, on Lincoln Avenue—I don't know just how to name the location, but it was on Lincoln Avenue—I think it was near Devon—Lincolnwood is all I know. I worked at the Harlem Stables during that period of time. That is located on Harlem Avenue is all I know. I worked at the House of Niles. I do not know where that is located. I worked at 4020 Ogden Avenue. I believe I stopped working at 194 these places September 6, 1939. I was working at 4020 Ogden Avenue when I last worked. Roy was my boss at these places as far as I know. I did assist in moving equipment at some of these places. I just moved tables and things for the kitchen. The only occasion that I remember now was from Harlem Avenue to the House of Niles. I could not remember when that was. I haven't any idea. It was between 1931 and 1939, but what year I don't know. I moved nothing more than tables, is all I know of, just ordinary tables. They were moved by truck. I do not know who ordered them moved. Roy was in charge. I can't describe Roy any better than I have.

Q. Have you forgotten his last name?

A. I never knew his last name. I was a porter at these places where I worked. The duties of a porter was cleaning, general cleaning. I worked a short period in the day but most of my time was consumed at night. I don't know who paid me for my work.

Mr. Thompson: I move to strike the testimony as immaterial.

The Court: Denied.

Mr. Thompson: No cross-examination.

ROBERT GOLDBERG, being duly sworn, testified as follows:

Direct Examination by Mr. Miller.

I have worked as an electrical contractor for twenty-two years. I know the defendant, William R. Johnson. I have done some work for him. In 1937 I done some electrical work on his farm. In 1937 the work amounted to about \$6,000. I certainly was paid by Mr. Johnson in currency.

I done some more work in 1938 on the farm, about 195 \$1,500 worth. I was paid for that. I did not do anything else for Mr. Johnson. I did have occasion to do some work at the Bon Air Country Club. I talked with Mr. Wait and Mr. Nadherny in connection with that work. I know Mr. Wait—I see him in the courtroom. The nature of the work performed at the Bon Air Country Club was electrical work in 1938 and 1939. The amount of the electrical work done at the Bon Air Country Club during 1939 was about \$13,000. I was paid as the job progressed, by check or by cash. Government Exhibits, 85, 86, 87 and 88 are my job envelopes pertaining to that job. I made all the entries on these records and these records are kept in the usual and ordinary course of my business. I do keep such records in my business. These are a permanent part of my records. The transactions reflected on these records were placed thereon at or about the time they took place.

Mr. Plunkett: The Government would like to offer Government's Exhibits E-85, 86, 87, and 88. You may cross-examine.

Mr. Thompson: We object to the three exhibits as immaterial and as duplication of the testimony of the witness as to the amount, I assume, of the money paid him for his work out there, and a sa duplication of the items included in the Bon Air books, which are already in evidence; and particularly as to these, your Honor, we also object that all this material on thes envelopes is uniatelligible, doesn't convey any information to anybody, that you can understand by looking at it; at least I can't; it may be my fault; and I want to suggest to your Honor that we are piling up a lot of duplication here, put a witness on and he testifies to certain facts, and then put a lot of exhibits in from which the witness testifies. Now, the rule is, as I understand it, that the records from which the witness testifies should be marked and identified and be present in court for the

purpose of cross-examination, but they should not be
196 put into the record and duplicate the matter; and if
this isn't the same thing to which the witness testified,
then certainly there isn't any foundation laid for putting it
in evidence.

Examination by the Court.

No. 3337 on Government's Exhibit E-87 for identification, is our job number. The amount of the contract price is \$7,300. Bon Air is the name of the place where the work was done, the address, Wheeling, Illinois. That is where the Bon Air is. The date of the entry on there is 5/1/39. \$3277.13 is the cost of the material. That is the total cost of the material that went into the job. The column 5/31/39, Labor, \$2351.20, is the cost of the labor that went into the job. "Direct Cost Involved, Com. 100" was the expense involved. That is other expense that accumulated on it, other than material and labor. 5/19/39, \$1,000. is a payment I received on account, and when I got the last payment I marked it up. That is the way I do it. I put this stamp here in the middle. That is true of all of them. These figures over here on E-85, for identification, are by my bookkeeper, as the job goes along and is not completed he takes a certain percentage of that material and labor and it balances out in my corner. That all totals up to \$2,884.35. When the job is in progress and is not completed he takes out what material has been charged and the labor that has been charged each month. That is to get some architect's certificate for it. That is the method by which we get our draw. These figures that are shown here in the lower right-hand corner on 85 are the figures put in by my bookkeeper, who was trying to get architect's certificates.

197 The Court: Objection overruled. They may be received.

(Thereupon GOVERNMENT'S EXHIBITS 85, 86, 87, and 88 were received in evidence.)

Mr. Callaghan: If your Honor please, I want to record an additional objection as to the other defendants, as to immateriality and as not binding on the other defendants.

The Court: Overruled for the present.

REX DAVIS, being duly sworn, testified as follows:

Direct Examination by Mr. Miller.

I am with Hans Teichert Company. The business of Hans Teichert & Company is painting contracting and decorating. I know the defendant, William P. Kelly. I did some work for him at Dearborn & Division Street, I believe in 1938—maybe it was in 1939, I am not sure. It was about \$1,200., I believe. Mr. Kelly employed me to decorate his room. Mr. Kelly paid me in cash at Dearborn and Division. I did some work at the Bon Air Country Club. Mr. Ed Wait employed me in that connection—I see him in the courtroom. There were two contracts in 1938 and 1939. Each required about four months to complete.

Referring to the 1938 contract at the Bon Air there was a complete re-modeling as well as enlarging of the property, which required a complete re-decorating job. That contract ran about \$15,000. I was paid for that work in cash, as the work progressed, during the year 1939. I have seen Government's Exhibits E-90 and 91, for identification, before. They are the sheets pertaining to all the work we ever did at Bon Air and for Mr. Kelly. They are part of the permanent records of my company. The entries thereon were made under my supervision. 198 This record is kept in the usual, ordinary course of our business. It is customary to keep such a record in our business.

Mr. Miller: At this time we will offer Government's Exhibits E-90 and E-91 for identification, to be received in evidence. You may cross-examine.

Mr. Thompson: We make the objection that they are immaterial under the issues made by the pleadings and that they are a duplication of expenditures at Bon Air.

The Court: Overruled. They may be received.

(Thereupon GOVERNMENT'S EXHIBITS E-90 and E-91 were received in evidence.)

Mr. Thompson: No cross.

GORDON KERR, called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Gordon Kerr. I am assistant secretary for Turner Resilient Floors. I did perform work during the year 1939 at the Bon Air Country Club. We did that work for the Lightning Construction Co. Mr. Nadherny employed us in that connection. Mr. Nadherny is an architect. We charged \$2128. for that work during the year 1939. We were paid for that work in 1939, part of it by check and part by cash. Payment was made at the Bon Air Country Club. Check was given to us by Mr. Love. Cash was given to us by Mr. Geary.

Government's Exhibit E-92, for identification, is a record of the contract amount and the payments thereon. I would call that a ledger sheet. That is part of the permanent records of our company. It is kept under my supervision and control in the ordinary course of business. It is 199 customary to keep such records in our business.

Mr. Miller: I will at this time offer Government's Exhibit E-92 for identification. You may cross-examine.

Mr. Thompson: We object. No proper foundation has been laid. It is immaterial to any issue in this case. It does not prove or tend to prove any taxable income of William R. Johnson and it is a duplication.

The Court: What is lacking in the foundation?

Mr. Thompson: Well, the document itself is obviously a ledger sheet, not an original entry.

The Court: Objection overruled.

Mr. Thompson: No connection with any of these defendants.

(Thereupon GOVERNMENT'S EXHIBIT NO. E-92 was received in evidence.)

EMERY J. FISHER called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Emery J. Fisher. I live at 4820 North Hermitage Avenue. I am an accountant, employed by the Insulation Engineering Service Company. I am office manager and accountant. In 1939 our company had occasion to do some work at the Bon Air Country Club in Wheeling, Illinois. We were employed by the Lightning Construction Co. Our employment was supervised by Mr. Nadherny, an architect. We performed insulation and acoustical treatment at the Bon Air Country Club. I do not recall the exact amount charged by us during the year 1939 for said work and services. They were approximately 18 to 19 hundred dollars. We received payment in different amounts, some by check and some by cash. The payments were made by the Lightning Construction Co. One of them was made direct from the Bon Air—that is, I mean the payment was picked up at the Bon Air I should say.

Government's Exhibit E-78, for identification, consists of 6 pages of ledger sheets covering the various operations of work completed at the Bon Air Country Club for the year 1939. They are duplicates of the originals. The originals were mailed to the construction company at the address shown on the copies used as our ledger sheets.

Government's Exhibit E-78 are part of the permanent records of our company that are kept in the usual and ordinary course of business. It is customary in our business to keep such records. They reflect accurately the transactions recorded thereon at or about the time they took place.

Mr. Miller: I will offer Government's Exhibit E-78 for identification. You may cross-examine.

Mr. Thompson: Well, we object as immaterial, as a duplication of items in the record, a lot of unintelligible sheets that cannot be understood without explanation. They do not in any way tend to show the taxable income of the defendant Johnson.

The Court: Objection overruled; it may be received. (Thereupon GOVERNMENT'S EXHIBIT E-78 was received in evidence.)

Mr. Thompson: No cross-examination.

HAROLD PAULSEN called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

201 *Direct Examination by Mr. Miller.*

My name is Harold Paulsen. I am secretary of the B. B. Paulsen Company. We sell machinists' mill and factory supplies. We had occasion to sell our products to the Bon Air Country Club in the year 1939. We dealt with Mr. Nadherny and Buck Hendricks in that connection. I sold them the builder's hardware. I would say the amount is between four and five thousand dollars—about 4500. We were paid. I received several payments from Mr. Geary in cash. I have seen Government's Exhibits E-82, for identification, before. These are our ledger sheets. They are kept under my supervision and control. It is usual and customary in our business to keep such records. They reflect the transactions stated thereon at or about the time they occurred.

Mr. Miller: I will at this time offer Government's Exhibit E-82 for identification. You may cross-examine.

Cross-Examination by Mr. Thompson.

This column of figures under "Debits" is the charges of the several items that were sold out there. I could not tell you what that first item, \$16.70 was—it is hardware. I could not state what the next item, \$3.61, was—there is too many of them. I don't know what any of those items were. It was all hardware—that is all I know, and over here in the column, "credits" is what somebody paid us. \$5.65 is a credit memorandum—something that was purchased and returned. I could not tell you what that was. Evidently Mr. Geary paid the \$475.83. There were a few times when we received checks. I couldn't tell you by our ledger sheet how I got that item paid, by check or by cash. I know I got the money—that is all. I know Mr. Geary gave me the money. Whenever I received the cash I got it from
202 Mr. Geary. I couldn't tell you where I got that \$475.

If I got checks they were mailed in to us, I presume Mr. Geary—I don't know—I couldn't tell you whether on his bank account—I don't know. I do know that several times I made trips out and received cash. Here is an item

of \$2514 I received cash on—hundred dollar bills, fifty dollar bills, ten dollar bills, enough to total up that amount. It is pretty hard to say whether the \$4.00 was \$2.00 or \$1.00 bills—there may have been some silver there. There is 36 cents. That is true, the odd cent was not silver—that was copper probably—all I know is that I got paid. I know that I received cash from Mr. Geary at several occasions. I don't know where Mr. Geary got the money. I don't know what connection he had with this picture. Mr. Johnson didn't pay me anything. I never talked to Mr. Johnson about this deal at all. I saw him occasionally, but I had no dealings with him, no dealings at all. The first payment made on these sheets goes back to 1938, May 4th. The 1938 account is all in these papers, too.

Mr. Thompson: I think we had better look at the other exhibits we have been passing on, your Honor. I would like to examine them, too. These were offered as 1939.

The Court: Finish with the witness.

The Witness: The first payment in 1939 was January 6th, \$88.77. I could not say who paid that. I can't say whether cash or check—we don't post it on our ledger. I don't think there is any way to determine which is cash and which is check. We post into a cash book first. That is a transfer ledger, yes, sir. Our bookkeeper makes up that transfer ledger. I did not make it up. Our bookkeeper is a man. He got his information from the reports that I would give him as I would get the cash. When he made that entry there I would turn the cash over to him.
203 When I made my report to him I would bring in the cash and say, "Here is some cash." "That is payment of the account right up to date." The amount I said I got there was \$88.77. I was out there at various times getting orders and straightening out deals that would come up. This book account I got here shows a credit of property returned on this account as well as payments. The credit memorandum is "C. M." in the book here. If you see "C. M." on there that means credit memorandum, and if you see "C" that means currency or cash or it is paid and that ends it. It is currency or check or cash, or anything else that begins with a "C"—I can not tell which it is, though. We don't keep a record of how we receive our money. The amount on these sheets prior to 1939, I would say, is \$600. The total of the accounts for 1939 is \$4526.50. There were eight separate payments

made to total that amount—I couldn't tell you how many in cash—I couldn't tell you how many by check. There is an invoice submitted for every item purchased. I put Mr. W. R. Johnson's name at the top of that sheet, at the start of 1938, when I received the first order from the grounds keeper, and I put W. R. Johnson there because I guess the grounds keeper told me to. The next entry on there is Bon Air Country Club. Evidently Buck Hendricks or Bud Geary told me to put that there. Buck Hendricks is one of the watchmen, I believe, or maintenance men around the plant there. In fact, he was the one I generally would contact to get my orders. I never knew him before I came out that way. I met the grounds keeper, who said I had better contact Bud and see if the order was O. K. to take out. The grounds keeper's name was Fred. I am sorry I do not know his last name. I guess I knew it but forgot it, but everybody called him Fred. He was the grounds keeper out on the golf course. The first time I came out I brought my catalogue along and saw Mr.

Wait, who turned me over to the grounds keeper.
204 Mr. Wait told me to see the grounds keeper about selling hardware. They were interested in getting a lot of tools to get the golf course in shape. That was golf course hardware. We sell that kind of hardware, the same as building hardware. After I saw the grounds keeper and sold him some hardware for use on the grounds then I saw Buck Hendricks. I did not see anybody else about this hardware besides Buck Hendricks. Buck was in the habit of calling our office and placing orders over the telephone. Sometime during November, 1938, we made some deal out there, and when our driver went out there the driver was informed to change the billing over to Lightning Construction Co. I can't tell you who told him that—I am just repeating our records. There were a few times that the Catering Co. bought from us. I was told by the boys that had placed the order that that was a separate charge account—I presume Buck placed the order. It is quite a long time, and it is pretty hard to remember every item. We haven't sold them anything since 1939. The last of this account is June, 1939, and it was closed out on that day. I believe that pencil total includes our credit memorandum, too. The total is less the credit memorandum—I can't tell you how many credit memorandums are in there. I did submit invoices to these people, itemizing what I had sold them, and they paid those invoices, and they were stamped

paid. They were all received. We kept carbon copies of the invoices so this is all a transfer ledger.

Mr. Thompson: We object to the document. In the first place, these cover the year 1938, which is obviously a duplicate of the Bon Air books, assuming they cover all the expenditures out there. Also, no proper foundation has been laid for the document and it is a duplication of the testimony of the witness, his summary of the testimony,

and no connection with any of these defendants and 205 does not prove or tend to prove any taxable income of

Mr. Johnson or any evasion of taxes by Mr. Johnson.

The Court: Objection overruled; it may be received.

(Thereupon, GOVERNMENT'S EXHIBIT NO. E-82 was received in evidence.)

Mr. Thompson: Now, as to those other documents, your Honor, I should like to add the objection to each one of them, without taking the time of the court to examine them, the government can be responsible for that, that if there is any items on any of those sheets other than 1939, they were all put in following questions which directed this matter to 1939, then I object specifically to those items on that ground and move to strike them.

206 BERNARD J. WHITE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. E. Riley Campbell.

My name is Bernard J. White; I live at Waukegan, Illinois. I have lived in Chicago and vicinity seven years. I am auditor for the Cecilia Company.

I worked for the Daily Racing Form from 1929 until 1936 as a bookkeeper, and from 1936 until 1939 I worked for the Nationwide News Service. My work consisted of auditing and supervising the records. My educational training in bookkeeping and accounting was high school and a year at Columbia University. I do not hold any accounting degrees of any kind.

I was bookkeeper for a corporation known as the Nationwide News Service from September, 1936, until December 29, 1939.

Government's Exhibits O-11 to O-15, inclusive, for iden-

tification are visible records of transactions with subscribers to Nationwide, Illinois Nationwide News Service. I worked on these records occasionally and supervised them. It was the usual and ordinary course of business of the Nationwide News Service to make entries in these records to which I have just referred, and they are a part of the permanent records of Illinois Nationwide News Service; the entires therein were made at or about the time of the transactions to which they refer, and relied on by that company in the conduct of its business, as far as I know.

Q. Now, can you state in general what the business of the Nationwide News Service was.

Mr. Thompson: Object to this as immaterial.

Mr. Campbell: It is a general question, your Honor, as to what the business of the Nationwide News was.

The Court: Overruled.

The Witness: Gathering and distributing news, particularly racing news. These books and records to which I have just referred purport to show the payments for service rendered—news service rendered to subscribers. These books and records, as far as I know, show accounts between the Nationwide Service and its customers.

Mr. Thompson: We move to strike the testimony of this witness as having no connection or relation to this case.

The Court: You undertake to connect it up?

Mr. Campbell: Well, your Honor, I have identified certain books and records here. I haven't offered them in evidence at all. The answer is yes, it will be connected up, but if counsel wants to cross-examine on the admissibility of these, why, now is the time to do it, it seems to me.

The Court: He made a motion. The motion will be denied, on the undertaking. Any cross-examination?

Mr. Campbell: Well, I will ask the witness another question or two, if I may.

Q. Do you know whether these books which you have identified, Government's Exhibit O-11, to 15, inclusive, whether they show transactions between the Illinois Nationwide News Service and one Flanagan?

A. I recall that they do.

EDWARD LENZ, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. E. Riley Campbell.

My name is Edward Lenz; I live at 3710 Circle Avenue, Chicago, Illinois. I was formerly with General News and Nationwide News. I have been connected with the Nationwide News Service since 1916.

Government's Exhibit O-11 to 15, inclusive, for identification are records of Nationwide News. Prior to coming on the stand, I have seen these records off and on for possibly ten or twelve years at the offices of the Nationwide News located at 431 South Dearborn Street, Chicago. The business of the Nationwide News Service was the gathering and dissemination of sporting information. They specialized in race horse information, but we also handled other sources of information. We would gather news, purchase it at race tracks and sell it to whomsoever wanted to buy it. The race horse information consists of making line, jockeys, scratches, results, mutuels, entries, from the different race tracks throughout the country. It was gathered at the tracks and delivered to different distributing points throughout the country where it was sold; one of those distributing points was Chicago.

209 I was the general manager of Nationwide News Service.

Q. To what use, if you know, did customers of the Nationwide News Service put this information which you have described in your testimony, to what use did they put that information?

Mr. Thompson: We object to all this as immaterial: in no way connected with any of these defendants.

The Court: Overruled.

Mr. Thompson: The question is entirely too broad.

The Court: Overruled.

The Witness: We gathered and sold news to whoever would purchase it, and what they done with it, we didn't care; it was used to make book with; by that I mean the same as you would go out to a racetrack and bet on a race horse, you could bet at a handbook.

Mr. Thompson: We object to that; general use without any connection.

Mr. Campbell: It is a technical term.

The Court: Do you know of it being used for anything else?

The Witness: It was also furnished to newspapers, International News, Associated Press, United Press. I don't know how many different press organizations throughout the country also got it.

The Court: Was it sold to people who kept gambling institutions or to people who further distributed the news?

The Witness: Precisely.

The Court: Do you know of it being used by anyone else?

210 A. No, I do not.

Mr. Campbell: Q. Do you know the defendant William R. Johnson?

The Witness: I have met him at times, yes, sir. I have heard of him possibly fifteen, eighteen years ago, and know him to talk to him maybe about ten years. He is the gentleman in back of counsel here.

I believe I met the defendant Flanagan once or twice in my life (indicating the defendant Flanagan).

I believe I had a conversation with Mr. Johnson about 1935 pertaining to a rate for service; we were attempting to get more money for our service. Nationwide News charged for supplying this information which I have described. I believe this conversation with Mr. Johnson was with reference to that charge. I believe it occurred at 4003 Ogden Avenue. No one else was present other than myself and Mr. Johnson.

Q. State what was said and done at that time between you and Mr. Johnson?

Mr. Callaghan: Object to conversation in the Spring of 1935. This is the charge of violation of income tax laws insofar as returns are concerned for 1936, 1937, 1938 and 1939. The alleged conspiracy is said to have been done some time early in 1936.

The Court: Well, it would be admissible against defendant Johnson, at any rate. Whether it would be admissible against the other defendants is not now necessary to determine, but it may be determined. Overruled.

The Witness: It appears to me that there was a rate set at that time to the amount of of 200 per week; 211 offhand I can't recall. For some unknown reason, which I do not recall, the rate was reduced to a hundred. I believe I spent four or five minutes talking to Mr. Johnson and the rate was increased, to the best of

my memory, back to \$200.00. That was about the sum and substance of the conversation. I would not recall the exact reasons as to why the rate should be increased for 100 to \$200.00. It appeared that the place did have a tremendous overhead, and, if I remember correctly, conditions in the City of Chicago weren't so very good, and he probably or possibly had a just cause for complaint. Nationwide based its rates on locations of places, caliber of places, and general appearance would about base what the rate would be. I don't recall anything said at this conversation with respect to the patron visiting the places concerned in this rate-making conference.

The account of J. Flanagan, I believe, was involved in this conversation.

I don't recall if Mr. Johnson in that conversation said anything about other forms of gambling besides betting on horses. He may have at some later time; I don't offhand recall. This all goes back for a period of years and we dealt with so many accounts that it is pretty hard to be specific.

I believe there were five locations involved in this discussion between myself and Mr. Johnson. To the best of my memory, there was Kedzie and Lawrence, Irving Park and Milwaukee, Crawford and Ogden, 63rd and Cottage, possibly 55th and Lake Park, and I believe one in the County, I don't know just whether it was in Tess-212 ville. I believe there were five at that time. I think the Irving Park and Milwaukee place was in the 4700 block. It did not have a name, to my knowledge.

The address at Kedzie and Lawrence was called the Horse Shoe; Ogden and Crawford was just Crawford and Ogden, as I knew it to be called.

I believe there was a place in that particular territory at that time—Dev-Lin or the Lincoln Tavern, although I don't recall talking with Mr. Johnson about that place. Mr. Johnson did not make known to me that there were other forms of gambling conducted in these various locations; that wouldn't be necessary. He did not make that known to me. I believe those records would show, although I don't know how the conversation came about and how it was arranged.

The Flanagan rate, as I recall, was \$200.00 at that particular time, and for some reason, one or another, the rate was reduced either to 100 or less, and as things became normal it was only natural for General News—I believe it was was General News at that time—to have the account

go back to its original rate. I believe I called Mr. Flanagan on the telephone and advised him of the same. The result of which was the appointment later on in the evening. I believe I made it with Mr. Flanagan, and when I arrived, Mr. Johnson was there. I believe I called Rockwell 5900 to reach Mr. Flanagan. The time of these conferences between myself and Johnson occurred between 7:00 and 7:30 o'clock.

I noticed a lot of sheets on the wall; they were horse race sheets used in connection with betting on the horses. There were a few gambling games around, I believe, chuck-a-luck, a restaurant, and a bar—rather, a soft drink stand—and a group of tables. I saw probably a half dozen different games in there. I don't remember in particular what they were. I very seldom go around gambling houses, although I would recognize a crap game or a roulette wheel, if I saw one. I don't remember offhand how many tables were there. Very few people were present in the Lake Park room at that time; I don't believe there was a half dozen in there.

I believe the conversation with Mr. Johnson occurred at the lunch counter.

There was a conversation between myself and one James M. Ragen and this same Mr. Flanagan in 1938; it happened at the office of the Nationwide News. The conversation related to rate again. I believe that incident was similar to the 1935 incident, there than we wanted to get more than \$200,000 for the different locations. The original rate—\$200,000, apparently took care of the places Mr. Flanagan had on at that time. As I recall this second conversation between Mr. Flanagan and Mr. Ragen, it seemed there was a place added on about 97th and Western. Offhand, I don't know if they had a direct line in there, or whether it was furnished by Mr. Flanagan or Johnson from Crawford and Ogden Avenue. It is hard to say authentically what the exact conversation may have been about all of the places. Some conversation as we had, though related to the rate on the locations discussed. The rate then would average about \$30.00 per week. I believe at that time there were four or five added to their group which we had furnished with a direct line from 431

South Dearborn. They were paid at the rate of \$30.00 a week, in addition to the Flanagan account which, to the best of my knowledge, then, was \$200.00 per week, I believe there were four or five other locations at \$30.00 a week.

Q. Was there anything occurred between this conversation and the second conversation between yourself, Ragen, and Flanagan, with respect to that basic rate of \$30.00 a week? Was there anything occurred between you with respect to that?

Mr. Thompson: I object to that as not being connected with any of these other defendants.

The Court: Overruled.

Mr. Thompson: We object to it as calling for a conclusion, anything that occurred between—

The Court: What was said and done? You have not told us all of it, have you?

The Witness: Well, it was natural for Nationwide to try to get more than \$30.00 per week for an account if the account appeared to be worth more. However, what the eventual settlement of the thing was, I don't know.

Mr. Campbell: Q. What did Flanagan say to you as to increasing that \$30.00 rate, if anything?

The Witness: I believe Mr. Flanagan said the place was not worth more than \$30.00 a week. From that point on I had very little to do with the Flanagan account, or, as a matter of fact, any accounts. There might have been another conversation concerning this same subject matter about a week later which was discussed with Mr. Flanagan on the second occasion; I don't recall offhand.

215 Q. Well, was there not a conversation where Mr. Johnson, Mr. Flanagan, yourself, and Mr. Ragen were present?

Mr. Thompson: We object to cross examining their own witness, leading him.

The Witness: There was a second meeting.

The Court: Overruled.

The Witness: I believe there was a third conversation where Mr. Johnson was present. That evidently took place at 431 South Dearborn—the same office. At that time Mr. Flanagan's conversation to Mr. Ragen was this: That if the place warranted paying any more, he would come in just as soon as possible and pay what the place was really worth. I can't recall if Mr. Johnson was present; I think it was in the afternoon. I hardly think Mr. Johnson was there; I don't know offhand.

These conversations didn't last more than five minutes at any time. I have about said what was said and done. We attempted to get more money.

The Court: What did you say about it?

The Witness: We believed the service was worth more money.

The Court: What did Mr. Johnson say about it, if he said anything?

The Witness: He said it was not worth—this is going back, and I had to deal with many, many subscribers. I can't recall.

The Court: What is your best recollection?

The Witness: That is the best of my recollection, they said it was not worth any more than he was paying; I believe he said that.

216 Mr. Thompson: We move to strike the summary of the conversation. He has not testified that Mr. Johnson said anything on the subject. This is Mr. Flanagan's account.

The Court: Overruled.

Mr. Campbell: (Continues examination.)

The Witness: That is about the sum and substance of Flanagan and Johnson. Again, your Honor, I can't authenticate just exactly word for word the conversation. It appeared that Mr. Flanagan done most of the talking, and his rate was so much. We were getting at the rate of \$30.00 per week for each extra book that was put on at that particular time. I would say that was 1938. From that point on, like I said, I had very little to do with the Flanagan account.

(The following proceedings were thereupon had out of the presence and hearing of the jury):

Mr. Campbell: The Government desires at this time to make a showing to the Court that the witness is hostile.

Now, he has not told the same facts with respect to these conferences between himself and Johnson which he previously related under oath, and which he verified yesterday; in particular, the question of the third conference, as well as the first conference, where the witness has answered—I quote from his own statement. (Reading):

"During the course of various conferences between Mr. Johnson, myself and others at the Nationwide offices with reference to rates charged to Mr. Johnson for Nationwide News Service, Mr. Johnson argued that his rates should be lower in comparison with the rates charged to other bookmakers because customers were drawn into his places by other gambling games rather than by bookmaking activities."

217 Mr. Campbell: It seems to me that the witness has not admitted that much of his testimony. To that extent, we are surprized at his answers, in that they are hostile, and we ask that he be declared a Court's witness, and we be permitted to cross-examine him.

Mr. Thompson: If the Court please, that is obviously a statement drafted by the United States Attorney; not one made by Lenz, and a mere conclusion, which is merely putting words in the witness' mouth.

This Flanagan account, if Mr. Johnson was there interceding for Mr. Flanagan, no doubt he did make some arguments, one way or the other, and we have no objection to statements being made as to exactly what Mr. Johnson said or Mr. Flanagan said, but it would be confusing to put into Mr. Johnson's mouth what Mr. Flanagan said, or into Flanagan's mouth what Johnson said.

Mr. Hess: That is right.

The Court: You may cross-examine him. Bring in the jury.

(The following proceedings were thereupon had in the presence and hearing of the jury:)

The Witness: I recognize the signature on the back page of Government's Exhibit O-16 for identification; that is mine.

I know a man by the name of Tracy Stains. Mr. Stains asked me questions that had to do with that statement in my signature. Mr. Stains swore me to the correctness of that statement and I affixed my signature pursuant to that oath. The initials appearing on each page of this statement, Government's Exhibit O-16, are mine.

218 Q. Now, Mr. Lenz, I will ask you if on or about August 28, 1940, this question was not put to you and this answer given—

Mr. Thompson: If the Court please, this is obviously, from what I have heard, the swearing of a witness before some Notary Public who has no authority to put a witness under oath, and the examination is a mere extra legal examination, without any attempt to be a report, as I understand it, of the specific words of the witness, but a summary of his statement as it is concluded by the examiners; furthermore, they have not shown how many were examining this witness, where this all took place, under what circumstances, and so on—who was present.

Mr. Campbell: I suggest it is proper cross-examination.

The Court: Proceed with the question. Overruled.

Mr. Campbell: Mr. Lenz, on or about August 28, 1940, was not this question put to you in this building, and this answer given (Reading):

"Q. Did you have any discussions with Mr. Johnson relating to the inadequacy of his rate as compared with other bookmakers?

A. During the course of various conferences between Mr. Johnson, myself and others at the Nationwide offices with reference to rates charged to Mr. Johnson for Nationwide News Service, Mr. Johnson argued that his rates should be lower in comparison with the rates charged to other bookmakers because customers were drawn into his places by other gambling games rather than by bookmaking activities."

219 Mr. Campbell: Q. Did you make that answer?

The Witness: That is true.

In the year 1935, the places discussed were the original five, I believe; in the year of 1938, the places discussed were the second four or five that I mentioned. Offhand, I can't recall if 119th and Vincennes and Blue Island were discussed, but it seems like it may have been because there was a place in that vicinity. I believe I did refer to that in my statement.

They had a private line out to 7212 Circle Avenue, I believe in Forest Park or Maywood—west. I believe that account paid right through to the General News. I had no knowledge that it actually belonged to anyone outside of the man that paid for it.

I believe the Harlem Stables was discussed in these various conferences. The Harlem Stables, to the best of my knowledge, was started some time in late 1937 or early 1938.

There is an account on these books, Government's Exhibits O-11 to 15, inclusive, for identification referring to these various locations I have mentioned, although I didn't keep the books myself. I have seen some of those names on there, I believe.

There was no change made in that \$30.00 rate as applied to the later locations I have mentioned at this last conference at which Mr. Johnson was present. The rate remained about \$30.00 a week for the extra locations, in addition to the \$200.00 rate. All told, the total payments made to Nationwide News Service per week were about \$400.00—possibly a little more.

220 In discussing this matter of rates at these conferences concerning these particular rates, other than Rockwell 5900, I believe I had Rockwell 5901, and I think I had Crawford 1918. Those are the only three numbers I would recall.

Q. This information which you discussed with Johnson in the first conference, where was that information delivered to by Nationwide News Service?

Mr. Thompson: We object to that as assuming any information was discussed by Mr. Johnson; interceding about some rates is all he has testified to.

Mr. Campbell: It involves these locations and witness has testified to. I think we are entitled to show it.

The Court: What is the question?

(Pending question read by the reporter.)

Mr. Campbell: Q. Do you know where it was delivered to?

The Court: He may answer.

Mr. Thompson: We object to the statement that Mr. Johnson talked about information to be distributed to anyone.

The Court: Well, he talked about rates?

The Witness: Yes, sir.

The Court: Rates for what?

The Witness: Rates for the information that was delivered to him.

The Court: Go ahead.

The Witness: Delivered to Flanagan.

The Court: Answer the question.

The Witness: The news was delivered on a teletype machine at 2141 Crawford Avenue.

221 Mr. Campbell: Q. Did the News Service later deliver this same type of information to some other location besides 2141 Crawford Avenue?

The Witness: I believe the machine was moved from 2141 Crawford Avenue to Irving Park and Milwaukee some time during 1938.

The Court: What kind of machine?

The Witness: Teletype machine.

Mr. Campbell: Q. That is 4715 Irving Park Boulevard?

A. 4715 Irving Park.

Mr. Campbell: That is all, your Honor.

The Court: What kind of teletype machine?

The Witness: Similar to a typewriter, other than you

work it like a typewriter and a tape will come out on the receiving end, a printed tape similar to a Western Union ticker.

Cross-Examination by Mr. Thompson.

I believe I started to work for the Nationwide News Service in 1916 or 1917; it might be twenty-three or twenty-four years. It was one of Annenberg's services later on. It has been out of business since November 15, 1939.

I believe there were four conversations during the Annenberg trial that I had with the representatives of the United States in connection with this news service and those customers. They first commenced talking to me about this

during the Annenberg trial, I believe it was during last 222 August or September. They did not start long before that time to interview me and the other employees.

When they first talked to me about that case, it was in the Grand Jury room; I was subpoenaed before the Grand Jury and they asked me questions similar to these. I believe I was taken into the office of the District Attorney before I was taken before the Grand Jury. The interview lasted possibly five or ten minutes. I don't recall offhand. I don't believe these books were present at that time.

I have a very keen memory for telephone numbers. I can remember them; that has been my training over a period of years.

The Nationwide News had about three or four hundred accounts in Chicago in 1935; I remember an awful lot of the telephone numbers; I don't remember all of them. I had a conversation with the different proprietors respecting their accounts during 1935. These proprietors moved around from spot to spot; it was customary to have more than one spot. They would go up there and use one a while and then move over and use the other one a while. Part of the time they would work in the city and part of the time out in the country; part of the time in the basement and part of the time in the loft. The services that we were furnishing was telegraphic news of information regarding the races down at the race track. The morning line was what horses were entered, how they were lined up for the morning. We gave a little story about the jockeys who were going to ride the horses, and so on. We gave the approximate board readings that appeared just before the race started and the

description of the race as it was being run and the re-
223 sults and the mutuels. We gave the whole story from
morning clear on through until the race was complete,
and the pay-off took place. It was furnished out of the New
York office to all the different press associations, who in
turn furnished it to the different newspapers; as a matter
of fact, most of the newspapers in the United States. The
newspapers here in Chicago—the races were being run out
at Washington Park—would have all this information in its
noon edition, the line-up, morning line, jockeys, horses' his-
tory, jockey's history, etc. It would have all the odds in
there up to that point. That was furnished through our
New York office. Most of that information was furnished
to Associated and United Press members, who in turn may
have re-hashed it. Each newspaper would maintain their
own sporting writers or editors. We had a rate for this
service that we charged a customer.

Q. As far as these bookmakers around Chicago were
concerned, your rate was whatever you could get?

A. We like to establish a fair rate. The rate was, I
would say, would average 25—for last year the average
rate was possibly somewhere between 30 and 35 dollars per
week.

We had inspectors going around and checking up on these
different bookies. It was customary to raise his rate if he
was getting a big play and making money. If he was getting
a poor play for a while, was being pushed around a little,
we lowered his rate for him. There were many weeks of
service given away so that our rate to bookmakers around
Chicago was dependent upon what they were doing at the
particular time, what their business was.

224 We furnished services by direct wire to some of the
points to some customers in Chicago. We had this
teletype which was a typewriter operated by electrical
impulses, and we wrote off the message on there for the
bookie, and that we sent from central headquarters. That
information written off on this typewriter by electrical im-
pulses kept the bookie right up to the minute with the news
on the race track.

Q. Now, the thing is all these bookies who subscribed
for your service have the right of copying it and selling it
to some other bookie?

A. That was customary, but it was not in the case of
a majority of subscribers. At times we would find a fellow

that would try to put one on for himself and get the benefit of the news for nothing. Once in a while we would find a man who was subscribing for our service and then he would pipe it out to a couple or three neighbors. They would then split the cost. That is what we had these inspectors around for.

Mr. Flanagan was a subscriber for our service. To the best of my recollection I would say the account of Flanagan had been on the Nationwide, on the General News books, at least ten years. His address was in the vicinity of Crawford and Ogden; whether it was 4003 or not, I don't know. I don't recall what his telephone number was at that time; you are taking me back a little too far.

About 1935 I had known Mr. Johnson for quite some time. I believe I had seen him and talked to him at different places. He did not have an account with us. My dealings were always with Mr. Flanagan. I notified Mr. Flanagan along about 1935 that his rate was going to be raised. I believe I called him on the telephone and notified him.

I don't recall the exact conversation, but it seems like there was an appointment made for me to meet Mr. Johnson at 4003 Ogden Avenue that evening. To the best of my memory, I talked with Flanagan and he wanted me to see Johnson. I may have talked to Bill Johnson offhand on the telephone; I thought I talked to Mr. Flanagan. I talked to Mr. Flanagan and the appointment was to meet Mr. Johnson. I met Mr. Johnson there. We talked about the service in general, like I said before. Those records evidently would prove that his rate was the customary amount at that time. My mission out there was to meet Flanagan; at least I had talked to him. When we were out there I met Bill Johnson who done the talking. According to the books, Flanagan's rate was raised; it was close in there, some time about 1935. I will say it was 1935; seems like it was March of 1935, the Spring of the year, if I recall right. General memory, I suppose fixes the date. It has not been suggested to me in any of these conversations or interviews. I fixed it by my memory. I would remember the telephone conversation and the fact that the rate was so much and we wanted to get more. If it happened about in 1935, I believe it was in the Spring of the year. The \$200.00 rate paid for the places that they were servicing at that time, and because of the trouble, one thing and another, the rate was evidently cut to a hundred. In talking to Mr. Flanagan on the 'phone,

it was to get the rate back to 200. The result was I met him out there. As I recall, the rate was then set at 200. I got the rate for Mr. Flanagan at 200 dollars for the teletype service going to 2141 Crawford Avenue. The 226 general agreement was that under that rate he was entitled to furnish it some other customers. That 200 dollar rate was set for the five accounts that were on at that particular time during 1935; that would be \$40.00 in account. There may have been another account; I don't know offhand.

I don't recall if there were other institutions in town where one customer would buy the service from us and then redistribute it to other customers. Later on there may have been, but not at that time. There may have been a lot of them we did not know about, but at that time they did not maintain any outside men to go around. I am talking about 1935. I believe there were one or two inspectors in 1935. The controversy may have arisen by reason of the reports of some inspectors; I don't know. There was enough general comment and conversation on the street that you can find out most anything you wanted without having investigated. In them days the news business was not anything like it was in later years; I refer to our news business.

I would say maybe four hundred places were operating in Chicago in 1935. I believe we actually had about 750 accounts, might have been more in 1939. Customers after 1935 just naturally increased—so many per year. I don't know if it went up to 900 by 1939, but I believe it was somewhere between eight or nine hundred, including the County accounts outside of the City of Chicago.

Evidently things went along smoothly with Mr. Flanagan between 1935 and 1938. I do not recall a conversation with Mr. Flanagan in 1936. I don't think I had another conversation with Mr. Flanagan until 1938. I was not 227 personally acquainted with Mr. Flanagan in 1935 when this first conversation took place; as a matter of fact, I don't know very much about him. I did not meet him until he walked into the office in 1938. He was an account on our books in 1935; that is about all I knew. When I talked to him, he wanted me to talk to Mr. Johnson.

I believe in 1938 I had another conversation with Mr. Flanagan alone. I can't remember the day of the year. In 1938, but it seems like it was about the time the place was started there at 111th and Western Avenue, 97th and West-

ern Avenue. We set the rate on that place. If I recall they could not get facilities between certain points, to Evergreen Park where this particular Beverly Hills place was located. I don't know authentically, but I believe we put our own private line in there from 431 South Dearborn to 111th and 97th and Western. That may have entered into the conversation. I think the thing mostly concerned was the rate for the place. It seems to me like it would be some time in September or October, the latter part of the year 1938; it would be about the latter part of 1937. I can't recall offhand. I did not pay much attention to the Flanagan account after 1937. That was handled by other people. I happened to be sitting in these conferences when he walked in.

I think the last conversation I had was in the latter part of 1937. When you try to think of a million things and answer a lot of questions that cover so much territory, it is hard to remember exact dates; it is hard to remember exact conversations. I am just trying to give these answers to the best of my memory and ability.

228 I believe Mr. Flanagan and Mr. Johnson came in together previous to this conversation with Mr. Flanagan. What type of conversation there was there, and what particular place it pertained to, I can't remember. I can't recall if it was before or after my conversation with Mr. Flanagan that Mr. Johnson came in with Mr. Flanagan. They were still talking about Mr. Flanagan's account.

I believe this statement was taken last Tuesday; that is the date. It might have been last Wednesday. I believe it was after this trial started. I think it was between ten and twelve o'clock.

Mr. Thompson: Q. Mr. Lenz, what was the last question I asked you before the recess?

A. I don't recall that, offhand, just what it was. Would he have a record of that there?

Q. Yes, he has got a record of it, but I just want to know how good a memory you have.

(No audible answer.)

Q. When was this last conversation you had with Mr. Johnson?

The Witness: The last conversation I had with Johnson was in the office of the Nationwide News. I think it was late 1937 or 1938. I don't recall offhand whether it was late 1937. It was about the time the place was started out at 97th and Western. It took place at 431 South Dearborn. I believe it was in the afternoon, about two o'clock.

James M. Ragen is the boss down there; he has three or four brothers. I believe that was his son that was there; James, Junior, was there. His brother's name is Frank Ragen; he may have been there, and may not; I don't recall offhand.

229 Q. See if you can't recall that Frank Ragen and

Mr. Flanagan here walked into the office together about two or two-thirty in the afternoon and that they met Mr. James Ragen and Mr. James Ragen, Junior, and talked with them. You were present in the room. And about this service Mr. Flanagan made his arrangements with them there. Mr. Johnson was not present.

A. I believe you are right. Mr. Johnson was not there at that time.

Q. Now, the only time that you had a talk with Johnson about this was that one time back in 1935, wasn't it? Now, have you refreshed your recollection?

A. I don't recall. He might have been in there twice. He might have been in there once; I know that he was in there once.

Q. You saw John Flanagan very frequently, didn't you, that is, as the business went along, as the years went along?

A. The man I had always thought was Flanagan was the man that came in and paid the bills. That was the man I was under the impression was Flanagan; as a matter of fact I called him Flanagan. It was not Johnson. My business was usually with Flanagan on rates. That is up to about 1937 or 1938. Then I did not get in on the conversation. I didn't have any business with any of them to any great extent.

I answered questions similar to that in the grand jury last year, I believe, during the Annenberg trial, as contained in the statement made a week ago today during the investigation of this Nationwide News Service of Annenberg, his officers and associates.

230 I was asked some questions in the District Attorney's office prior to this time last Wednesday. I made a statement there; I did not see any Notary Public. I was in conversation with Mr. Stains and Mr. Plunkett, I believe. I believe there was a stenographer there; nobody else. I got there at ten o'clock and was excused until two. I waited around there until about twelve-thirty and came back at two and waited until about five or five-thirty, and stayed there until about six-ten or six-fifteen. I only talked to them dur-

ing the time that statement was being prepared. The rest of the time I was just waiting. I came back the next day and signed the statement; I believe it was about ten-thirty or eleven o'clock. The girl was making notes; I was answering questions.

Mr. Thompson: Q. Is this your language? Now, be careful about this.

"A. During the course of various conferences between Mr. Johnson, myself and others at the Nationwide offices with reference to rates charged to Mr. Johnson for Nationwide News Service, Mr. Johnson argued that his rate should be lower in comparison with the rate charged to other bookmakers because customers were drawn into his places by other gambling games other than by bookmaking activities."

A. Those are my words, yes.

I asked for a copy of it, but I never read it. I don't think there was anything in there that was other than what to the best of my knowledge and belief was true. I had no

231 fear or thought of anything wrong in my statements;

I read it before I signed it. It took me possibly ten minutes to read it; I believe there are ten pages. I might have been a little longer reading it. Mr. Stains was there and a stenographer when I read it. After I got through reading it, I signed it and was excused. Nothing at all happened, except I signed it; that is all. Mr. Stains did not swear me to this statement. Before I ever made any statements at all, he asked me, will I tell the truth, the whole truth and nothing but the truth, and I said I usually tell the truth of anything I know about; to the best of my knowledge and ability I do. Mr. Stains asked me that. He did not say in what capacity he was pretending to swear me. I don't recall him mentioning anything like by what authority he was pretending to swear me. I believe he is a prosecutor; I have not had much experience in courts.

I did not ever tell anybody before last Wednesday that Mr. Johnson had these conversations with me. On the last Annenberg investigation I was asked that question about Johnson and one thing and another and I repeated similar to the text of that conversation there, the very same thing; I mean when they were investigating the Annenberg News Service. I never made any statement to anybody else about it; not until last Wednesday. There is no other statement around here that I have seen. Before last Wednesday, I

talked to Mr. Stains and Mr. Plunkett on Tuesday. Prior to that I talked to no one.

232 On this case I never was before the Grand Jury. I believe the first time I was before a Grand Jury was in the fall of last year, 1939; it might have been August or September. It was during the Annenberg trials, Nation-wide trials. I believe it was on a Monday; I wouldn't remember the exact date.

I now reside in Chicago at 5710 East Circle Avenue. I came from that address this morning. I have not been living at that address; I have been in Cleveland for the last six or eight months. I was subpoenaed from Cleveland; that is where I came from to make this statement last Wednesday.

Redirect Examination by Mr. E. Riley Campbell.

During the War I was an instructor in radio, continental codes and transmission at Harvard University.

TRACY R. STAINS, recalled as a witness on behalf of the Government, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. E. Riley Campbell.

My name is Tracy R. Stains; I took the stand here heretofore and at that time I was sworn. I am the Mr. Stains referred to by the previous witness. I hold the commission of Deputy Collector of Maryland, and also a commission as a Special Agent, Intelligent Unit, Bureau of Internal Revenue.

Q. In the ordinary course of your work as a Special Agent of the Intelligence Unit of the Bureau of Internal Revenue, is it your customary practice to administer oaths to witnesses when you so desire?

Mr. Thompson: We object to the matter of what the custom is. No authority under the law. If there is, the Court takes judicial notice.

Mr. E. Riley Campbell: I am entitled to go into what his practice is.

The Court: He may answer.

A. I do.

Mr. E. Riley Campbell: Before the next witness takes the stand I am going to offer in evidence Government's Exhibits O-11 to O-15, inclusive, for identification, the same being the books of the Nationwide News Service, which were referred to by the witness White, and to some extent by the witness Lenz. I think the proper foundation has been laid.

Mr. Thompson: We object to the documents. No proper foundation has been laid for their reception in evidence; not identified with any of the defendants, excepting possibly the defendant Flanagan, and they are not even identified definitely with him; they do not tend in any way to prove any of the issues in this case; certainly do not tend to prove the taxable income of the defendant Johnson or any attempt to evade the payment of taxes on his income.

They show, of course, hundreds of accounts, I assume, from the great volume of the documents, of Nationwide

News Service, to which these defendants are in no way 234 connected at all; and certainly this record will require a box car to haul it away if we are going to put in this kind of evidence. I assume there are three or four pages in here on which the name Flanagan appears.

Mr. E. Riley Campbell: I submit, your Honor, that the proper foundation has been laid.

The Court: They may be received in evidence. If it is necessary to make a record on appeal, parts of the exhibits which have no bearing upon the issues before the Court may be eliminated from the transcript.

Mr. Thompson: Well, if the Court please, these documents have not been examined by the Court at all. I think you will find there is no identification, no intelligible information which has been pointed out which anybody could find. Certainly the jury should not be expected to go through, oh, I should say four or five thousand pages here to try to find some information about something.

Mr. E. Riley Campbell: There is a way to enlighten the jury on matters of that sort if it becomes necessary.

The Court: They have been received.

(Said instruments, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS O-11 to O-15, inclusive.)

HENRY STAR, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Henry Star.

235 Mr. Thompson: If the Court please, before we get farther away from these exhibits, I want you to see this. I move to strike this document, O-14, the contents of it, down there, which has not been proven at all, bottom of the page. That is just one thing. (Handing exhibit to the Court.) I haven't had time to look through the rest of them.

The Court: Denied.

The Witness: I live at 6127 North Claremont. My business is Secretary of Frank Star & Son, sheet metal and roofing contractors.

During the year 1939 I had occasion to do work at the Bon Air Country Club. We were asked to figure on the work by Mr. Nadherny, the architect; received the contract. I believe that work ran into approximately \$10,000.00 or \$11,000.00. I was paid for that work; we were paid through the Lightning Construction Company; I believe most of it was checks; one payment, I believe, in cash.

Government's Exhibits E-93 and E-94 for identification are ledger sheets on this particular work. They are a permanent part of the records of our company and they are kept under my supervision and control; the entries on Exhibits 93 and 94 were made in the usual and ordinary course of business. It is customary in our business to keep such records, and the transactions reflected on these records were recorded at or about the time they occurred.

Mr. Miller: The Government will offer Exhibits E-93 and E-94. You may cross-examine.

236 *Cross-Examination by Mr. Thompson.*

I did not make these entries; our bookkeeper did. I believe the first entry is in March, and I don't know, off-hand, when the last entry is; some time during the summer; probably May or June. One year is covered on these two

sheets of paper. There are various persons' accounts on these two sheets of paper. I don't know how many. Exhibit 93 for identification starts with the year 1935, and the account winds up with 1940.

With reference to the next sheet, 94, we have what we call a contract book in which the items are entered as we receive them and then as the work is completed it goes through the journal, through the ledger, and is charged to the party. The charges to Mr. Cowen and to B. R. Kellac & Co., Lowenberg, have nothing to do with this job. They have nothing to do with the Bon Air. I identify the account here that has to do with the Bon Air job; there is written in there, Bon Air, Lightning Construction Company, Bon Air. That account continues from there on to the next page. I have not totaled on here anywhere the sum of money—there is a balance brought forward from time to time, usually at the end of the month, or when a payment is made. The last payment was made on this on August 16, 1939, \$2,798.14; that was the last payment; that closed the account. I don't know what the total was prior to that, except just by recollection. We would have to total up the debit items, get the amount of the work.

Mr. Thompson: We object to the documents as cumulative of the witness' testimony and as immaterial to 237 any issue here; tend in no way to prove the taxable income of the defendant Johnson; no way identified with the defendant Johnson; and on the ground that there is a lot of material on these two sheets that have no connection with the accounts of Bon Air, if any.

Examination by the Court.

The references to Bon Air begin right there (indicating); that is the item 1939, three fourteen, Lightning C. Co., with Bon Air above it. That is so on the reverse side of the sheet marked E-93; continues down to the bottom of that page and then it goes right here (indicating) to E-94.

The Court: They may be received. Objection will be overruled.

(Said instruments so offered and received in evidence were thereupon marked GOVERNMENT'S EXHIBITS E-93 and E-94.)

R. B. REEDY, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Müller.

My name is R. B. Reedy; I live at 3726 North Kedvale. My business is plumbing and heating contractor. The name of my company is R. B. Reedy Company; I am president of the company.

I know the defendant, William R. Johnson. I have done some work at his home near Lombard in the country. 238 I don't know just what street, where it is. That would be on what was known as the Sunny Acres Farm; I did that work in 1939, I think. We put in some new bathrooms. We fixed up some of the farm houses too. I don't know exactly what it amounted to. I don't remember how much I charged Mr. Johnson, but I could see in the books.

We did do some work at the Bon Air; I worked on Mr. Nadherny's orders; he was the architect. The amount of work done at the Bon Air was around \$30,000.00; I was paid for that work. I was paid in checks, in cash; I received the payments from Bud Geary out at the Bon Air.

I have seen Government's Exhibits E-97 and E-98 for identification before. They are ledgers out of the books, our books. They are part of the permanent records of our company. They were kept under my supervision and control and were made in the usual and ordinary course of business. It is customary in our business to keep such records, and the entries made on these records accurately reflect the transactions at or about the time they occurred.

239 Government's Exhibits E-97 and E-98 for identification are ledger sheets; one is Lightning Construction, and one is Bon Air; E-97 is a ledger sheet purporting to be the account of Bon Air. Exhibit E-98 is a ledger sheet containing the name of the Lightning Construction Company. The top two items on that sheet are designated "Bon Air"; December 31, 1938; February 28, 1939; April 29, 1939; March 31, 1939, and May 31, 1939.

Mr. Miller: The Government will now offer EXHIBITS E-97 and E-98 for identification into evidence.

Cross-Examination by Mr. Thompson.

I do a general plumbing and heating construction business. I have done business in and about Chicago. I have been in business in this vicinity since 1915.

The work done at Mr. Johnson's farm and also out at Bon Air Country Club were merely two jobs out of many done in that period of time.

I didn't make my contract direct with Mr. Johnson for the work I did at Sunny Acres Stock Farm, I talked to Mr. Nadherny, the architect. He made a contract with me for the work to be done; that was in 1938. I was working 240 on a time and material basis; I worked there in 1938 and 1939. I made that contract with Mr. Nadherny. I entered the words "Bon Air" at the top of the first account marked 97 because that is the location of the job. I haven't any contract; I was working on time and material with Nadherny; I made an arrangement of that kind. I made a contract to do certain work, furnish the materials, and they paid me for the time. I furnished the materials and they paid for them; cost plus something. I furnished the men and paid the wages; they paid me the cost of the wages plus a percentage for my services for supervision. I don't remember if anybody else was present when Mr. Nadherny made that bargain; it was at the Bon Air.

Buck Kerns, the business agent of the plumbers, sent me out there; he told me to go out there; he called me up and I went down to the Bon Air. I think I saw Mr. Nadherny first. I saw Roy Love; nobody else in particular. I was working out there part of two years; I started in the spring of 1938 and finished, I guess, in May or June. There were additions and alterations going on at the club house during all that period, and the plumbers can only work as the other workmen are out of the way. They would work as the work got ready. That was old work; you could practically finish it, rough in some and finish it. A bar was put in, and one thing and another. They were there off and on; I don't know just what time. After we had roughed the plumbing underneath the flooring, they had to lay the floor and we put the bar on top of the floor. I discussed this work with Mr. Nadherny as it progressed; I may have talked it over with Roy Love; nobody else that

I know of particularly. I got paid for the work out 241 there from time to time.

C-9-11 that I am looking at is the book from which this transfer was made, and on "April 21st" over here, opposite the figure "1000," I assume is the date credit was made, or payment was made. That is all in 1938 down to here. I don't remember who paid me that \$1,000.00; I received different payments there from different persons in 1938. I don't remember the exact amounts. Mr. Geary gave me the payments in 1939. The top one on Exhibit 98 is the first payment that was made in 1939. On sheet 97, those are all 1938 dates. Looking at the credit side on sheet E-98, the payments there for 1939 began on January 14th. That is a payment made on the account of the Lightning Construction Company; Geary made that payment; Geary did not make all the payments that appear on that sheet. Mrs. Johnson—William Johnson's mother—paid Roscoe Street, and Elmer Johnson, Mr. Johnson's brother, paid Glenwood and Thorndale. They paid two items on account there which have nothing to do with the Bon Air. The first, second, fourth, sixth and seventh payments there have to do with Bon Air. The debit items are the charges that were made for that work. The items on the credit side were paid in this amount. Mr. Geary made the payments as to all the items that had to do with the work at Bon Air.

There was a discussion in the summer of 1939 about putting in some drainage work to take care of an odor that was coming from a sewer already installed; I walked around the grounds and looked over the situation; there was a discussion of this subject. I spent about a half

242 hour walking about the grounds discussing this proposition of drainage. Nobody ever told me to go ahead with it. After the discussion, I heard nothing more about it. I think Mr. Nadherny, Mr. Johnson and myself walked around the grounds discussing this proposed drainage. I think there was an engineer there; I don't remember his name.

Q. Who else was there, Mr. Reedy? Tell us all.

A. I think Mr. Skidmore was there. All of them indulged in the discussion of this proposal.

Q. Now, Mr. Skidmore furnished the money to pay \$3,000.00 on this account out there one day, didn't he?

A. Not to me, sir. I don't remember that he handed

it to Mr. Wait in my presence and that Mr. Wait handed it to me.

Q. Do you remember making any remark about one very large thousand dollar bill, one of these old type ones? You said it must have come out of the bottom of the box?

A. Well, that is in 1938. I don't remember what time this was in 1938, some time when I was working out there. I don't remember Mr. Skidmore giving me any money; I don't remember Mr. Skidmore handing Wait any money for me. I remember a thousand dollar bill—one of those big ones. I made a remark about it being an antique piece of money. It might have been handed to Mr. Wait in my presence by Mr. Skidmore, but I don't remember it. I saw Mr. Skidmore around there sometimes when I was doing this work. I saw Mr. Skidmore out there several times when I was working there; Mr. Johnson was around there; Buck Hendrickson was there. Buck and I have 243 been fishing together a few times. I saw him out there at the Bon Air a good deal. He was not the one that got me the job. He might have suggested to the business agent of the plumbers that he call me up. I have told you about this whole thing now as near as I can remember.

Mr. Thompson: If the Court please, we object to E-97, in addition to the grounds upon which we have been making objections to these exhibits; that it has to do only with charges in 1938 and payments in 1938, which are duplicated by the accounts on the Bon Air books, which are in evidence. They are otherwise immaterial.

And then as to 98, which are payments in 1939, according to the witness; we object on the ground that the exhibit is cumulative evidence, apparently put in to corroborate the testimony of the witness who just testified, and a duplication of entries in the Bon Air books, and no proof that Mr. Johnson paid in all of these items and does not prove or tend to prove his taxable income or any attempt to evade payment of taxes on taxable income.

As to all the other defendants, it is immaterial and in no way connected with them.

The Court: Overruled.

R. J. SCHUMACKER, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is R. J. Schumacker; I was acquainted
244 with an establishment in Chicago known as the K. and
K. Club. When I last saw that place, it was at 2133
South Kedzie, and prior to the time it was at that place,
it was at 2320 South Kedzie and 25th and Sawyer. I
worked at that establishment for Frank Villim.

Q. When were you employed there?

Mr. Thompson: We object to any examination on this
subject; no connection with any of these defendants.

Mr. Plunkett: Well, we are going to connect it up, if the
Court please.

Mr. Thompson: We except to that statement.

Mr. Plunkett: We can only develop as we go along what
the connection is.

The Court: Do you undertake to connect it up?

Mr. Plunkett: Yes, sir, we do.

The Court: It may be received on that undertaking.

Mr. Plunkett: Q. When were you employed there?

A. 1929 and 1930.

Q. And what were your duties in that establishment?

Mr. Thompson: We object to any recital of the duties
way back in 1929 and 1930.

The Court: He may tell what he did.

Mr. Thompson: Can't have anything to do with the tax-
able income in the year 1936.

The Court: Overruled. He may tell us what he did.

The Witness: I was a service man. A service man is
a man that gets racing information and then in turn im-
parts that information to the room, or in the early
245 morning of the day he receives the jockeys, the morn-
ing line, the weight changes, and proceeds to put
those on the wall sheets. Those were my duties at that
place. I had a telephone equipment at my disposal.

Q. And how much telephone equipment did you have?

Mr. Thompson: We object to that as immaterial; cer-
tainly the time being far too remote, and there is no con-
nection with any defendant.

The Court: Overruled.

The Witness: I had two cradle telephones and another line that led, that is, a private wire, that led to what was known as the clearing house. I have been in the clearing house; I think that address was about 2135 South Crawford. It is a two story frame or brick, I am not positive; upstairs is a flat, just an ordinary house. I think there was a jewelry shop down in the first floor, and just a flat on the second floor.

Q. And when you went in there what did you see?

Mr. Thompson: We object to this as immaterial.

The Court: Overruled.

Mr. Hess: Further, your Honor, he ought to fix the time.

Mr. Plunkett: Q. When did you first see this place?

The Witness: This was when I was working at 2320 Kedzie in 1929 and 1930, in there. I saw a ticker tape, telephone, microphong, desk, chairs; that was about all. I would see Al Kalus, Joe Conroy; once in a while I would see Skinny Moss up there. I have seen Al Kalus since that time at 63rd and Cottage Grove—the Southland Club.

I think he was manager of the book there.

246 Mr. Plunkett: Q. When was it you saw him at the Southland Club as manager of the book?

Mr. Thompson: (We object to repeating the conclusion.

The Court: Overruled.

The Witness: I couldn't place the time as to the day or month. It was some time in 1935 and 1936.

I have seen Joe Conroy elsewhere. Later when I went to work at the Casino, I saw Joe come in in the morning around noon time, say hello, talked to a few of the fellows. At other times I think I saw him out at Tessville in the evening.

I had occasion to use this private telephone wire that I have described previously. It was in 1929 and 1930, 1931. Over this wire came this racing information, came the jockeys and the regular betting, and the weight changes, the winners, mutuels, racing information. It came to me first; I re-broadcasted it into the room.

I do know Joe Conroy's voice; I can recognize that voice over the telephone. That was not the voice of Joe Conroy that gave me that information at that time; it was Al Kalus' voice. I would not say there were any other uses to which that private telephone was put, unless somebody

wanted to talk to some one in the other room and they would get on that head set and talk to them.

I had something to do with the procuring of supplies and equipment for the K and K Club I have testified about; I would order them from Joe Conroy. That is the same one whom I have been talking about. I called him on the telephone, or I would speak to him on the wire and I would tell him we need mutual sets, paste, pencils, crayons, 247 whatever supplies we needed. Sometimes I would speak to him on this private wire, or I would tell Al to order them.

I am acquainted with a phrase used out there known as "Unpaid bets." An unpaid bet is a bet that is uncollected. I was acquainted with what was done with the unpaid bets at the time I first worked there. These unpaid bets were carried for a certain period of time, usually a month. They were kept in the safe, in envelopes with the numbers on them. Sometimes the people would take ten days to collect the tickets, two weeks, and usually at the end of the month there would be a certain amount of unpaid bets. We would take the adding machine and total them up, and sometimes we would pay a telephone bill, or other miscellaneous matters, and then if there was anything left over Frank used to give it to the help in equal proportions, including himself, I think. That custom lasted one or two months, and then it was changed. The unpaids were listed on sheets and the money was sent to the clearing house.

I left my employment at the K and K Club some time in 1930.

Q. Will you state the circumstances under which you left?

Mr. Thompson: Object to all this as immaterial, not binding on any of these defendants. I don't see how it could be material.

The Court: Counsel will undertake to connect it up?

Mr. Plunkett: Yes.

The Court: Overruled.

Mr. Thompson: Of course, the undertaking to connect it up doesn't satisfy. All this detail of how he left 248 and why, what it has to do with this case with regard to unpaid or unreported income of Mr. Johnson is quite vague, it seems to me.

The Court: Overruled.

Mr. Plunkett: Q. Will you state the circumstances under which you left?

A. I was discharged. Mr. William R. Johnson, the defendant in this case, discharged me. I was working and a message came in there, I don't know whether it came in over that wire or not, to Frank, that Bill wanted to see us both, so we went over there. When I say "we," I mean Frank Villum and myself. He went over to 4020 Ogden and walked in. Bill was waiting for me. He went around in back of where the cashier and sheet writers were and reached in his pocket and pulled out a garnishment notice. He was very much upset about it and he balled me out and said he had enough trouble the way it was in trying to keep good fellows working; if it wasn't for the money he was making, different things, and he said, I am sorry, but I will have to let you go. I was fired. I didn't work at the K and K Club any more after that.

I saw Frank Villum many times after that. I have seen him at 2133—different spots; I bump into him here and there. It might have been a saloon, or it might have been on a street corner.

After leaving my employment, I had occasion to see the defendant Johnson again a few times. I went back to ask him if he couldn't see his way clear to put me back to work; that was in the early—beginning, I would say, in 1931, maybe 1932.

249 At the time I called on him, I might see him in the Horse-Shoe; I saw him at the Lincoln Tavern and I saw him at 4020; I just wouldn't remember where.

I had occasion to talk to the defendant Johnson in 1938 at Skidmore's office. No one else but Mr. Johnson and myself were present. He said, "What do you want?" I said, "I would like to have my job back," and we talked back and forth, and he still was berating me for being so foolish, too silly. He said, "You know you are smarter than the teacher," "smart guy," or something like that. "You know you could have one of these spots, because I liked your work." Then he said, "I don't know what I can do for you, but catch up with me at Tessville, and I will see." He told me to come there Friday night. I went out to Tessville that following night to what they called Dev-Lin. Gambling was going on there. I saw the defendant Johnson at that time; I had a conversation with him. Bill called me over. Mr. Sommers was sitting up on

the stand, overlooking the game, and Bill called me over where Mr. Sommers was, and he said, "This was one of our good men that couldn't behave himself. I want him to go to work tomorrow." I don't think Mr. Sommers said anything. I did go back to work thereafter at the Horse-Shoe—4720, or something, on North Kedzie on the second floor; it was a gambling room. Eddie Gates was in charge of the book. The defendant Sommers was there; I think he was the manager. I worked at the Horse Shoe right up to 1939, within a few weeks of when they all closed. I worked Saturdays there.

I worked at the Casino at Irving Park and Milwaukee; that is a gambling establishment. The defendant Reggie Mackay was in charge of that place while I was working there.

250 Q. Tell us how you happened to go to work at the Casino while you were still working at the Horse-Shoe.

A. Gates talked to Larry Bovin, who had charge of the book over there. The man they had there was working a little too much—this man wanted to get a little rest, and he fixed it with Larry that this man would take a couple of days off a week and allow me to get in that time working out there. The first Saturday I went to work as a sheet writer. The sheet writer is the man that takes bets on horses. He sits at a desk, and he has a pad and paper in front of him. He writes on that a record of bets that are made on different horses. The customer tells the number of the horse or horses he wants; that is written on this paper, and the man is given a ticket with a number that corresponds with the number on this sheet. The ticket is the customer's receipt for the bet placed on that horse. Sheets are kept in duplicate; there is carbon paper between the sheets. The original sheet would go to the cashier that was assigned to get that particular color—red, blue, black, or whatever he was writing. The money was carried over to the cashier, and duplicate sheets were put in a little drawer. The duplicate sheets were taken out to the service room and sorted out as to color, numerically, and they were wrapped up and given to the head cashier. I did have occasion to learn what the head cashier did with those sheets; he took them to the clearing house. At the time I am now testifying, the clearing house was at Irving Park and Milwaukee.

Mr. Thompson: I move to strike all of this business about

his taking sheets to the clearing house. He says he was 251 never there.

The Court: Did he say he took the sheets to the clearing house?

Mr. Plunkett: Yes, your Honor, he did, though he says he has never been inside of the clearing house.

The Court: Let it stand.

The Witness: I think on occasion I have drove with the head cashier, going that way in his car. He would drop the sheets off there, give them to somebody at the door; they were the duplicate sheets.

There were some other sheets made up during the course of time gambling was in operation. There was a sheet kept in the service room that recorded certain layoffs that were made; it recorded the difference in the daily doubles and quinnellas; if there was an expense for supplies, that was on that sheet; if there was an expense for service, that was on that sheet. At the end of the day, the sheet was balanced out as to the ins and outs. By "ins and outs," I mean they might bet \$100.00. Sometimes they may have ninety coming back; sometimes they would not have anything coming back, but that was carried on that sheet, and if it came to a figure where they owed us, it was marked on that sheet; if we owed them, it was marked on that sheet also.

I also held the position of service man in the Horse-Shoe. Later on, in 1938, it was a little bit different job. All of that information came over loud speakers; I mean information concerning the running of the horses when they were lined up and when they went off. I had a private 252 telephone there at my disposal; it was connected to the clearing house. I recognized the voice of the person at the other end of this private phone I talked over. I would hear Joe Conroy on there, I would hear "Skinny" Moss on there once in a while. That was about all I would hear on there. I know there were other lines connected; I could hear people talking on there. Once in a while I would catch Larry Bovin's voice on there; he was at the Casino on Irving Park Road. Occasionally I would hear Pat Moody on there on the daily doubles. I think that is about all the voices I heard. There were a lot of voices on there, but I never paid much attention to them.

I know Tom Hartigan; he is a brother of the defendant James Hartigan. I may have heard Tom's voice on there, too, once in a while.

Q. Will you state the nature of the conversations that were held between you and this person Joe Conroy over this private phone you have testified about?

Mr. Thompson: We object to any conversation out of the presence of these defendants; immaterial to any issue here.

The Court: It may be received, not to prove the truth of the statements made in the conversation, but merely to prove that such conversations were had.

The Witness: Well, you would pick up the telephone and give the daily doubles, give the quinnellas, and sometimes Joe would call in. He might talk to Gates, sometimes he would say to me, "Get your brown sheets"—or green sheets; whatever sheets he wanted—"for yesterday, and look at ticket number so and so and figure 965, paid 253 out \$10.25." He would say, "Well who is that brown cashier?" I would tell him and he would say, "Well, tell Gates," and hang up. The sheets that he was talking about were those original sheets written by the sheet writer. What was meant by that conversation was that this brown, blue, black, red cashier had made some kind of mistake in figuring a parlay or figuring a bet, and he was told about it. He may have overpaid or underpaid—it didn't make any difference; they were checked and told about it.

Four or five sheet writers, four or five cashiers, and two or three board men were working at the Horse-Shoe while I was there; then on the other side of the house was this roulette, red and black, twenty-one. There were no slot machines in there.

I would say that Jimmie Hartigan was there once in a while at the Horse-Shoe when I was working there; he ran the place.

I worked at the Casino during the period that I testified to; I was a sheet writer at the Casino. The nature of my duties as a sheet writer at the Casino were the same as they were at the Horse-Shoe. I had no other duties at the Casino except as sheet writer.

I don't know where the duplicate sheets kept at the Casino were sent.

I have been present in front of the premises of the Casino, in the street, during the evening.

A lot of cars pulled up there. Well, they would walk up to the doorman, whoever was there, and hand him a bundle wrapped in newspaper or something, and they

254 would go right on their way. I did recognize some of the individuals who did that. I have seen Jimmie Gleason pull up there once in a while. He was working at Monticello and Milwaukee at that time. The character of the establishment was a gambling room.

I do know the voice of "Skinny" Moss I have talked about. I heard the voice in the bookmaking establishment I was working in. The voice was issuing from the loud speaker in the horse room.

I am acquainted with the duties of the various employees who worked in these gambling establishments I am talking about.

The duties of a floor man are to see that the games are kept filled up as much as possible, even up as much as possible; give any information to any patrons that might want it; to issue a payout slip for any payouts.

A shill is an individual that fills up the game; he is not a bona fide player; he is an employee of the house. He gambles with the house's money.

A dealer is a man that either deals checks or money at the crap table; a twenty-one dealer deals at the twenty-one table. If it is a money game, the dealer has got stacks of money in his hands. If the line hits, the dealer goes around and pays bets that are scattered out on the table.

A box man is a man that sits between two dealers, that watches bets. He is supposed to see that everybody gets their right bet; that somebody don't get somebody else's money. You buy a stack of chips, and you buy chips through the box man. He puts the money in the box.

255 A stick man is a man that is opposite to the two dealers who handles the dice, throws them back to the shooter, and the shooter rolls them out, and he calls the number and calls whatever bets are on the table. He uses a stick to rake bets from one end of the table.

A cashier is the man that receives the money and pays it out. He receives money from the different games; they take the box from the tables to the cashier. I don't know how often the boxes are taken to the cashier. I think once every hour; I never timed them. Anyone of the runners, money runners, or floor men brings the boxes from the table to the cashier.

There was no difference in the dice tables when I was at the Horse-Shoe. One game would be a money game; the other game would be a check game. A check game they play with checks; a money game is played with money. The

checks are little round disks; they are sold by the house to the patrons; they play with them. At the money table, they use just straight money.

I wouldn't know how much money passes back and forth between the table and the cashier. I wouldn't know whether the cashier at the place kept a sheet of paper before him.

I have seen the game Keno played in these establishments I have referred to. I have seen it played at 4020 Club and I have seen it played at Harlem Stables. I have seen it played at the Lincoln Tavern, and I have seen it played at the Casino. I have seen it played at 63rd and Cottage Grove, the Southland Club.

256 Kenc is played with a card. Those cards are numbered with 15 numbers, and the object is to fill the card with five numbers across, and that is Keno. The man that has got the pill box with a number of peas in this box, turns it over four or five times and gets a pea out and calls the number, and if you have that number on the card, you put a marker on that card. You finally have five numbers straight across and you win.

I have seen two or three hundred persons at one time playing that game in those places I have named. I don't know how many games are played every night of that game. They played seven or eight or nine games.

I have seen slot machines at the places I have named. I saw slot machines at the Stables. There might have been several. I saw slot machines there in 1938 and 1939—maybe ten. I have seen a few at the Casino. I think that is about all. I wouldn't know who serviced the slot machines or who had anything to do with them.

I am acquainted with the location at 63rd and Cottage Grove known as the Southland Club. I have seen the defendant Hartigan at that place; it might have been a few times. It was in 1934 or 1935.

I know the defendant, William P. Kelly, ten or twelve years. I first saw him at 4020 Club back in 1928, 1929 and 1930. He was a cashier, a book cashier.

I know the defendant, John Flanagan. I first met him at 3833 Ogden; that was a gambling room. He was running the place back in 1925, 1926 and 1927.

Mr. Hess: I move to strike out the entire testimony about Flanagan at this place, as being too remote to any of
257 the issues in this case, 1925, Judge.

Mr. Plunkett: I will develop that further, if the Court please.

The Court: Q. You say a man was running a place, what do you mean?

A. Well, he was taking care of the business that was going on there in so far as they pay out, and such as seeing that the public was handled nicely. He was the manager.

I have seen the defendant Flanagan since 1925. Starting in 1929 and 1930 I would probably see Flanagan almost every day. He was at 2141 Crawford. I have had occasion to talk with him over the telephone in 1929, and they inaugurated a system of every bet that was taken and recorded on the sheets was called in through the clearing house—not over this private line I was talking about, that was a different line. That was a different hook-up. I do not know how that was hooked up.

The sheet writer sat there with the breast 'phone on. As you made a bet he talked into that breast 'phone and somebody at the other end of the wire recorded that bet.

Mr. Hess: I object to that unless he knows that somebody at the end of the wire did something.

The Court: Q. How do you know that?

A. Well, I didn't. I wouldn't know that it actually took place by seeing it, but that was the set-up that was explained to us at that time; that all those bets were to be called in. That lasted just a couple of days and that was changed.

Mr. Plunkett: Q. Well, while you were calling in these bets, did you know whom you were talking to at the other end?

258 A. I was not doing that.

Mr. Thompson: I move to strike out all this explanation to us, no identity of who explained it and none of these defendants were present.

The Court: All right, other than the sheet writer talking into a telephone transmitter on his breast may go out.

The Witness: It was about that time I talked to the defendant Flanagan over the telephone. He balled me out about giving somebody a house bet. It was too late at that time to give a man a house bet when he should have got a form.

I said, "I believe it is four or five minutes before post time," no flashes, the prices not changed any.

He said, "The man should not get a house bet. He should get a form." He was talking to me on my old

telephone. It was an ordinary telephone—a public telephone, and had a Crawford or Lawndale number. He would call, or I could call him. He did not tell me where he was at the time I was talking to him over the telephone. I don't remember that I ever had occasion to call him over the telephone while I was there at that time.

I know who the defendant, Andrew J. Creighton, is. I first saw him at the 4020 Club, I would say in 1933 or 1934. He was the floor manager, or had charge of something there.

I know the defendant, Reginald Mackay. I have seen him at the Casino in 1938 and 1939. He was the manager. I have seen him out at the Harlem Stables. When the Casino was closed, they moved out there. I think he was cashiering out there; that was in 1939. I would not know who was in charge of the Harlem Stables.

I have known the defendant, Jack Sommers, since 1938. I worked for him at the Horse-Shoe. I have seen him out at Tessville, at the Dev-Lin; no other place.

I have known the defendant, James Hartigan, twenty years or more. I first met him around 22nd and Crawford. It might have been in the ice cream parlor there or pool room, or it might have been on the corner. He lived in that section there. I have seen him at the Horse-Shoe. I have seen him at 63rd and Cottage Grove; I have seen him at the Stables. I don't remember when I saw him at the Stables. I don't believe I can name any other place where I have seen the defendant Hartigan, except the three or four I have named.

I have seen him at 4020 Ogden Avenue. That was in 1933, 1934 and 1935. He was one of the managers around there.

260 Mr. Hess: We object to that as a conclusion again, and also it is six or seven years ago.

The Court: What was he doing?

The Witness: Running the place. I have seen him make out cash-off slips, for one thing; start different games. If one game got too full and they would have to put another game on, he would tell the floorman to start another game.

The Court: Let the answer stand.

The Witness: The box on the dice tables is a small wooden box with two sides to it, and two covers that open on hinges. I think the box would be about 6 by 8. It has two covers, one on each side. The box man just takes it and lifts the cover up and places the money in it and closes

the cover up. It is not part of the duties of the box man to ever take the money out of that box once it goes in. After the box has been filled with money by the box man, it is carried to the cashier's stand. I guess a new empty box is put in its place.

I know an individual named George Ogren. I have seen him a few times at Lawrence and Kedzie. A couple of times I saw him when he was working at Division and Dearborn. I saw him at the Harlem Stables.

I know an individual named John Kalus. I have seen him at 63rd and Cottage Grove; it was along in those years, 1935, 1936, 1937 and 1938.

I know an individual named Bartley H. Berg; he worked at the Casino as book cashier all these years.

I know an individual named Edward J. Gates; he 261 was my boss at Lawrence and Kedzie at the Horse-Shoe.

I know an individual named Charles Smetana. I knew him when he had a place on Milwaukee and Crawford and he moved to School Street. Then he moved to 7500 on North Clark Street. He was manager of the book; I would not know what address that was. It was on Milwaukee Avenue west of Crawford, about a half a block. I do not know the name of the place. The second address I mentioned seeing Charles Smetana at was School Street, right off of Crawford Avenue. I don't know what that address was. It was 39 something on School Street; it was a gambling room.

I know an individual named Lawrence J. Bovin. He is sometimes known as Larry. I first knew him way back in 1928, 1929 and 1930. He was employed on Milwaukee Avenue; just where it was I don't know. I later worked for him at the Casino. He was the book manager at the Casino.

I know an individual named Ralph Mayo. I know him from 63rd and Cottage Grove; he was manager of the side games there when the Southland Club first opened up. I suppose that was in 1933, 1934 or 1935.

I recognize the picture, Government's Exhibit O-125, for identification; it is Joe Conroy whom I have been testifying about here. I don't believe I ever had any conversation with any of these other defendants about employment between the time I was discharged from the K. and K. Club to the time I went to work for the Horse-Shoe. I recall that I might have talked to Jimmie about seeing Bill on a few occasions when I would bump into him either at the Horse-

Shoe, or wherever he was at. It would be along in 1934, 262 1935, 1936, in there.

Q. Can you state what was said by you to Hartigan and what he said to you, in substance, as best you can remember?

A. In substance I told him—

Mr. Thompson: We object to this conversation prompted by the United States Attorney and which is out of the presence of any of these defendants except Mr. Hartigan.

The Court: It would be admissible against the one defendant. Overruled.

The Witness: I told Jim I was out to have a talk with Bill if I could and he said, "Well, he might be here around 11:00 o'clock, and watch for him, and go up to him and have a talk with him." My discussion with Hartigan was just general topics of the day.

Everybody calls William Johnson "Bill," referred to as the "big guy." I don't know who referred to him as the "big guy"; I wouldn't remember who or what, but several. I never did hear these defendants so refer to him.

Cross-Examination by Mr. Thompson.

My name is Robert J. Schumacker; I am known as Shoes, and Ben—Rudy. I was born and raised in Chicago. I first worked at the C. B. & Q. Railroad about 25 years back; that was my first job. I then went to work for the Chicago Telephone Company for a couple of years. I was working in the switchboard department; that is, had charge of the installers that installed the switchboards. I had a certain number of installers that reported to me as to 263 what jobs they were to go on and what they were supposed to do.

I went to school, and Metropolitan Business College, and took up a commercial course. I didn't say that I learned to install switchboards in business college where they taught shorthand; I said I had charge of the men that installed the switchboards. It was a clerical job. I had charge of the men that installed the switchboards in various parts of the City of Chicago, they would report to me and get orders. I mean I was a clerk and handed out the orders that were handed to me to the switchboard construction crew. I had a number of installers that were under my jurisdiction, that followed my orders. If I sent them

to 116 North Franklin to install a switchboard, that is where they want; it was an order on an order slip.

I think I worked for the telephone company as a clerk a couple of years—about 1913 and 1914, in there, 1915. A man by the name of Michael Reynolds was my boss. I was working in the PBX department—switchboard installation. The office was on Franklin and Washington; that was the Chicago Telephone Company. I went to the west division exchange in charge of telephone installers. I handed out slips again to the men who installed the telephones; I did have authority over them. I was in charge of that particular number of installers that had a certain particular district to install telephones. I was the clerk in charge of that bunch of installers; I don't know whether I had a title or not. I think I would know how to install a telephone myself—I didn't at that time. I didn't know how to install

a switchboard when I was in charge of the switch-
264 boards. I stayed out at this Western division about a year after that. My employment there was about three years, I think. I was out there in 1914 and 1915. A man by the name of James Riddle was my boss; that was for the Chicago Telephone Company.

I then went into the coal and ice business for myself at 4055 West 26th Street. I stayed in that business six or seven years—the same address.

I then went to work for a man by the name of Rentner at 26th and Crawford in 1923. That is when I started to work around handbooks. I worked for Rentner until 1924.

I then went out to Cicero and worked around a few books there. I worked around 1500 North Clark Street; I worked downtown in the Chicago loop; always for bookies, up until about 1929 when I first started working out here at the K. and K. Club. I worked for Frank Villim out there about two and one-half years. They had a gambling house there; they just had horses and twenty-one; horses and bookies is just in the day time. They didn't have night races in those days, so that the bookie business is over about 6:00 o'clock. My work in the bookies was during the daylight hours. They had the twenty-one game there; that is not played at night; just during the day. The twenty-one game is blackjack. Blackjack is played with cards, an ordinary deck of playing cards that runs from the Ace to the King, one, two, three, four, and the blackjack is any picture and Jack to make twenty-one. An Ace and a 10 makes twenty-

one. It is played in gambling houses. That game was played while the races were going on; they ran horse races and twenty-one at the same time. This place closed up at 6:00 o'clock in the evening. I didn't learn about all these other games there at the K. and K. Club.

I never played Keno there—they sometimes call it Bingo. I never did play Bingo at the Evanston Country Club.

I never played Bingo out at the Chicago Country Club out here in Wheaton, or at Skokie out at Glencoe. I didn't play Bingo out at Lincoln Fields. This Bingo game was played in these parlors in the afternoon and a lot of the ladies of the neighborhoods would come in and they would have a Bingo game. They used corn for markers or little discs.

I believe it was in 1930 Mr. Johnson called me up to 4020 Ogden Avenue and fired me; I think it was in October. I don't know what else happened in October, 1930. I think that was the year before the big stock market crash—that was in 1929; I don't know what day of the month. Nothing specifically that I can recall that stands out in my memory otherwise than the general going-ons of the world in general. I don't remember if there was an election in November, 1930. I don't remember who ran for office back there. I do remember that I had a talk with Mr. Johnson in October, 1930. As I remember, it was on a Friday at seven o'clock in the evening. I had been working on the service that day—on the service wire at 25th and Sawyer. I think that address is 2501 South Sawyer. That was the K. and K. Club. It is not a fact that my boss fired me there for stealing. I didn't go to Mr. Johnson to have him intercede for me. I wouldn't say that we had been dividing up the unpaid bets around there among ourselves. I think that that was a situation that was done with the knowledge of the people that would have charge of those things. I didn't know and I wouldn't know anything about that.

That was not the first time I saw Mr. Johnson; I knew Mr. Johnson as a man about town. I did talk to Mr. Johnson from 1930 to 1938; I talked about being put back to work; it was somewhere in 1934 and 1935. I don't remember the day or month. I found other employment after I got fired; I worked in Cicero and different places. In Cicero I worked for a man named Kunso; we worked that summer meeting, we always booked at the race tracks,

Hawthorne and Sportsmans Park. I worked for him every summer. In the winter I got jobs somewhere else, if I could.

The balance of 1930 after I got fired in October, I worked at 1504 North Clark Street; I worked for a man by the name of Sinclair; I was service man in a bookie there. I worked there maybe a year and a half. The club had no name; the same proprietor was there all the time—Sinclair. He had either Nationwide or General News. I think it was General News. General News changed to Nationwide. I think they were both Annenberg's services. One succeeded the other; I wouldn't know that.

I then went to work for a man by the name of Hartman in the wrecking business. I think I started working for Hartman in about 1932 or 1933; I don't remember the month. It might have been part of the year; I don't remember. I

was going from one job to another, just anything that 267 came along. I worked for this man Hartman maybe five or six months; I do not remember the months, in 1932 or 1933, along in there. After I went to work for Sinclair there were no jobs; I went to work for Hartman. I didn't run his business; I did a little labor work. I tallied lumber, loaded lumber; might have six or eight men. I do not know who the men were; I knew a few of them, though.

Joe Conroy did not work for me and I did not work for him. I think I last saw him in 1939.

I don't remember where I worked after I got through working for this company; any odd jobs I could get. I think my memory is reasonably good. Maybe I wasn't working, but I don't remember. I always worked at the race track during the racing seasons—Hawthorne, Sportsman's Park, Washington Park. I don't think I worked there in the summer of 1933. I don't remember where I worked in the summer of 1933. I think I might have been working for Hartman in the fall of 1933 and the same place in the winter of 1933. I finished my job with Hartman around in the end of 1933. I don't know where I went to work then. I might have worked at the Chico Club in January, 1934. I might have been that time; I don't remember. I was working at the Chico Club extra in January, 1934; Paulsen was running that club. The address was 5140 West 25th Place, it was a bookie. I worked off and on there for maybe six or eight months; two or three days

a week. I am not sure as to the years 1934 and 1935 what I was doing. I would not remember the month I finished working for Paulsen. I don't remember where I worked in the fall of 1934.

268 I don't remember where I worked in the winter of 1934; still the same answer for the spring of 1935. I was still around the race tracks in the summer of 1935, whichever one happened to be running; they all ran; they all started on the first of May; I am reasonably sure. Our Chicago racing season started on the first of May. They couldn't all run at the same time in the same district. One meet would run into the next meeting. We would have about six months of racing here. I think that is the way it took place in 1935.

I think I first worked at Aurora in the summer of 1935 during the whole meeting; twenty-seven to twenty-eight days of meeting. I would not remember. I can't recall whom I worked for. I worked in the mutuels department; I mean I worked for the Racing Association. The boss there was Charley Trimble. He did not hire me. Mr. Trimble was the general manager of the Aurora Racing Association; I did not work for Mr. Trimble directly. I worked for a man by the name of Ray Sullivan. He had charge of the different windows. I was selling tickets. It was in 1935; might have been 1936 or 1937; it was not in 1938. I don't remember where I was in the spring of 1938.

I don't know Doc Williams. I don't believe I know Mr. Converse.

I talked to Mr. Plunkett before I got on the witness stand. They called me to come down and asked me a few questions. Then I would leave; then I would come down again and they would ask me some more questions. Mr. Plunkett is the man I talked to. I don't know who sent me down; I came in with the subpoena. I went in
269 some office around here; then I went in another office.

I talked to Mr. Stains some time in the month of May, 1940, the first time I came around the court building here. Some Marshal served me; I don't know who. I was served on the eighth floor after I got in the court house, I think. I received a letter that I was to report to a certain room at a certain time, on a certain date. I don't know who signed the letter; I don't think I have it. I don't think the wording of the letter was that a mutual friend suggested

that I might come in and tell them something. I don't remember the wording of it, but it was from the Government and I came down at that time. I don't know what date it was. I was told to report to a certain room number; I don't remember the number. I came down anyway. When I got down, I was immediately served with a subpoena. The subpoena said something about grand jury forthwith. I didn't go before the grand jury forthwith. Mr. Converse, or whoever it was, said, "You take this up to room—"

I think it was on the eighth floor. I walked into the room, somebody told me to sit down and wait, and pretty soon Mr. Stains called me into an office. I talked to him a couple of hours; he asked me some questions. There was no stenographer reporting that. He was writing; he had a questionnaire; just Mr. Stains was there. I was not taken before the grand jury. I left, and then I got 270 a message to come down to the District Attorney's office. I got that message from Mr. Stains by letter in June or July—I think it was July, this year. I was not taken before the grand jury then. I believe Mr. Stains took me into Mr. Plunkett's office. I believe Mr. Stains talked to me before he took me into Mr. Plunkett's office. He said he wanted Mr. Plunkett to talk to me. I don't know whether he had any minutes or memoranda to suggest questions to me. They asked me question after question and I just answered the questions they asked me. They kept calling me in there and asked if I knew this man. I would say, "No, I don't know him," and then they would ask me something else, and then they would go away. They would say, "Come down tomorrow." I think I came down all together maybe five or six times. The last time I talked to them before I got on the stand was this morning, about two hours. I didn't give them any information. He just said he wanted to go over this thing, and we sat there and talked back and forth; then he would leave and go somewhere else and come back. He was looking at some notes of some kind.

I believe I did sign that questionnaire.

I believe I was working in the Horse-Shoe in May, 1940. I am a little bit confused. I was not working in May, 1940; I was not working in April, 1940. I was working in 1940—little odd jobs I would get; chauffeur a man around three or four days. I didn't work in any books in

1940. I quit working at the Horse-Shoe in August,
271 I think, 1939. I don't think they closed completely;
I don't think they closed until September.

The clearing house and the Casino are both in the same building. My understanding is that the Casino is a gambling club. That is my understanding that the clearing house was there; I wouldn't know. I worked at the Casino. The so-called clearing house is entirely separate and distinct from the Casino; they are not entered at the same entrance; there is no connection between the two at all. The Casino is just a gambling club. I have never been in this so-called clearing house; I don't know a thing about it. I don't know who goes up there or who stays there; I don't know how long it has been there.

I have been told that I got a dollar and a half a day and mileage as a witness, just the times that I come in; whenever they call me, I get a dollar and a half for that day and mileage.

I was at Skidmore's office in 1938; it is on South Kedzie Avenue, about 2900 or 3000 south. It is a one-story brick building. It is a junk yard for steel, wire and iron. I did not hang around there a good deal. I don't know who Doc Williams is.

272 MIKE D. McGLYNN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Mike D. McGlynn: I live at 216 Central Avenue, Austin. I was employed at one time at the place known as the Southland Club at 63rd and Cottage Grove Avenue. I had known Creighton for many years and I went in and asked him if I could go to work. He said, "Come around tomorrow." I came around tomorrow and went to work. I was cashier. I worked as cashier at the Southland Club approximately a couple of weeks, I guess; that was 1939. I believe I went to work the 20th or 25th day of May, 1939.

After working at the Southland Club, I worked in Forest Park and 97th and Western. It was the Select Club in Forest Park. I went to work there when they closed up

63rd Street. I was cashier there. They closed up Cottage Grove and sent us all over to 97th Street, and then they picked out a couple of the fellows and sent some here and kept some there. I happened to be one that was sent out to Forest Park. Creighton picked me out to go to the Select Club; that is the defendant I see here in the court room. I acted as cashier at the Select Club. I worked at the Select Club probably two or three weeks. I then went back to 97th and Western after the Select Club closed. I don't remember who told me to go to 9730 Western. I think everybody out there went. The fellow in charge, McKenzie, I believe, told me to go out there; I don't know his first name. I was cashier at 9730 273 Western Avenue. I worked there until about the 30th of June.

I went down to Missouri and came back, and the next morning I was told that they had let me out. I saw Bill Foley, the man that was in charge of the place, when I went out there.

Q. Will you state what he told you?

Mr. Thompson: We object to any conversation with other than the defendants.

The Witness: He said he was sorry but he had to let me go—

Mr. Thompson: Just a minute.

The Court: Just a moment. How are you going to get that in?

Mr. Hurley: Well, it is part of the whole conspiracy; we have shown that Creighton sent him there.

The Court: Objection overruled.

The Witness: He said he had orders from the clearing house to lay me off.

I went out there a couple of days after that and talked to Creighton. He said, "Well, what do you want me to do?" I said, "I would like to get my job back." He said, "I can't do anything: I am only working here." That is all he said. That is the same Creighton that is in the court room here.

Cross-Examination by Mr. Hess.

I was put to work by Mr. Creighton; I had known 274 him for a number of years. I have heard that he was operating a gambling house; I didn't know it per-

sonally. I have never worked at a gambling club before I went to the Southland; that was my first venture; it was he that hired me. I was paid like the rest of the boys—at the place where I was hired. When that place closed, I went to another place. I assume it was Creighton's place. I got my instructions from him to go out to these other places, and from Forest Park to 97th Street. These three places must have been operated by Mr. Creighton; I don't know. I went to him and he put me to work, and I went from one to the other. In my employment by Mr. Creighton, I went to work and stayed at work at these different places and got paid in the regular course of business in the office of the place. I wouldn't know when one opened and the other closed; 63rd and Cottage closed and I went to Forest Park; then Forest Park closed and I went to 97th Street. I had no connection with it after that when they all closed in the summer of 1939. I had no contact after the last of June.

I was paid all my wages within this organization. When I went to 97th Street the last time and had a talk with Creighton, the place was not closed at that time. The Forest Park crew had been reduced. I wouldn't know if some of the men had been laid off. I was laid off after the 30th of June, I guess it was; I was at 97th and Western.

I was in there when I talked to him about re-employment. I never paid but very little attention to who was working, how many were working; I was only in one department, confined myself to that. I wouldn't know that in the summer months the business goes down in these gambling clubs and the force is reduced.

Creighton did not say to me, in substance, "Mack, how can I put you to work when we have no business? When business increases I will be glad to put you on again."

Creighton said, "What do you want me to do? I can't do it. I am only working here." That is what he said. I was the only one that was being laid off.

I have known Mr. Creighton prior to the time I have been working, about thirty years. Prior to going to work here, I was a salesman, silica sand salesman; I worked for a company down in Missouri. When I left Chicago and went to Missouri that is where I went; I went back to get my clothes. I have been a salesman for that company since it was in existence, about four years. Before that I was a salesman; I have been a salesman during my working life. I quit that job for the Missouri

concern. The sand business was pretty slow. I was not making any money; I wanted a job. I heard that Creighton had work. I did not know personally until I had seen him. I know him personally for many years. I certainly knew him.

When we closed the Forest Park place, I guess it was because we had no business out there; I don't know. We took some of the crew and put them back to 97th and Western, or some of them. I don't know if ultimately the crew at 97th and Western was let out. I was not 276 there since the night I saw Creighton. I would not know whether there was a number of others let out.

Redirect Examination by Mr. Hurley.

I do not know now that the Select Club was known by any other name. I would not know what the address was.

ROBERT ACHESON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Robert Acheson; I live in Western Springs; I am employed by the Illinois Bell Telephone Company as local manager of the Lafayette unit. I have been with the telephone company since 1929.

Government's Exhibit O-31 and O-124, inclusive, and O-126, O-126-A and O-127, are the records of the Illinois Bell Telephone Company maintained in the usual course of business. The entries thereon were made in the regular and usual course of business at or about the time the transactions occurred. It is the usual and regular course of business of the telephone company to make such entries at or about the time the transaction occurs. All of the exhibits, with the exception of Exhibits O-127, O-126, and O-126-A, were laid to the account of one individual. In the making of the entries of the records, a code system is used.

A code system is a system of abbreviation, using 277 numbers, letters and symbols to indicate various items of service and operation. That is done for the purpose of having uniform entries on the records of the tele-

phone company. We maintain a school to teach the employees this code. I am acquainted with the meanings of the various words, numbers, symbols, etcetera, that you have been referring to in these exhibits.

The individual whose account those records refer to had other telephone service.

Q. Will you state what that service was?

Mr. Thompson: If the Court please, we want to see what we are talking about. We object unless there is some connection shown of some defendant in this case. There are no names of any of these defendants; there are names of total strangers on there. I have never heard the names before in this case. I ask the Court to inspect them.

He has asked of that particular person who is on all these particular cards what other service he had.

The Court: Let him answer the question.

Mr. Plunkett: Q. Will you answer the question? What other service did that individual have?

The Witness: The record I hold in my hand indicates at the time of the application, at Lawndale 5549. That was located at 2141 South Crawford Avenue; Crawford 1918 at 2141 South Crawford Avenue; Rockwell 5900 278 and 5901, at 3841 Ogden Avenue.

Mr. Thompson: I move to strike that answer as having no connection with any of these defendants.

The Court: Overruled.

The Witness: Government's Exhibit O-126 refers to Rockwell 5900. The record indicates that this service was located at 4020 West Ogden Avenue. This service was installed at 4020 Ogden Avenue on July 10, 1931. I cannot tell from this record how long it remained there.

Referring to previous exhibit, number O-126, indicates that on March 10, 1939, we changed the number of Rockwell 5900 to Crawford 1066. Turning to Exhibit number O-126-A, indicates that on September 11, 1939, John Flanagan, or that we transferred the service under the name of Flanagan. The name of the individual who had had that service in his name prior to the time it was taken over by Flanagan in 1939, appears on our record as Frank Vase. Exhibits O-31 and O-124, inclusive, relate to an account under the name of Frank Vase.

Mr. Thompson: Now, if the Court please, we object to any further inquiry about these exhibits showing 279 service to one Frank Vase, not a defendant in this case, showing no connection with the defendants, and

it is not mentioned in the bill of particulars or in the indictment.

The Court: Overruled.

The Witness: Government's Exhibit No. O-31 covers the service at 2135 South Crawford Avenue on the second floor. I have been there in 1938. It is a sort of a two-flat building with a store on the first floor. At the time I was there, the telephone equipment was on the second floor; that was in 1938. I saw three men there; one was a man known to me under the name of Mr. Morgan, and a man named Roy; the other party I did not know, or did not hear his name.

Government's Exhibit O-125 for identification is the party that I knew as Morgan; that is the party I saw there that day when I was there. I had prior contact with that individual. During the last few years that I had the account, he was the one I dealt with in reference to that account.

I think I am able with this pin to put it in that map, Government's Exhibit O-1, to indicate the location of the address 2135 South Crawford.

Mr. Thompson: We object to the demonstration of this witness; no connection with these defendants; immaterial where it is located.

Mr. Plunkett: (Out of hearing of jury.) We are going to show by this witness that from the address 2135 South Crawford the network of private telephone wires went out to reach the places named in the bill of particulars 280 and that these private telephone wires all came from this location of 2135, the telephone number Rockwell 5900, mentioned by a previous witness, and show each house named in the bill of particulars was connected with this.

Mr. Hess: What is the difference if they are a mile apart or three minutes apart?

The Court: Overruled.

(Witness places pin in map.)

The Witness: I have in the last few days made a careful study of these Government's Exhibits O-31 to O-124, inclusive; I have at the request of Government's counsel made notes of what these records show with relation to service at that point. My notes show the locations of other telephone service that was connected to the telephone service at 2135 South Crawford. I believe I can with these exhibits and my notes state the various changes that were made in this from the date it started.

Mr. Thompson: I don't want to interrupt any further, and on all of this examination with respect to all these exhibits I should like it understood that the same objection is made, that we are objecting on the ground it is immaterial, no relation to the question of the taxable income of W. R. Johnson, the defendant, or any question of whether or not he has evaded any taxes, and it is in no way identified with any of these defendants, certainly not with the defendant Johnson.

The Court: It may be so understood.

281 The Witness: Government's Exhibit O-31 covers the application for service under the name of, that purports to be Frank Vase, for service at 2135 South Crawford Avenue, on the second floor. This application was taken on July 23rd of 1930, and we were instructed at that time to secure the key at 2141 South Crawford Avenue for the installation of service. On August 9th of 1930 we installed ten central office lines in that building, five lines being in a key cabinet arranged so that two instruments could answer any calls on that cabinet. The additional five lines were terminated in instruments with receivers with headbands for the person using the telephone.

On August 15th of 1930, from our records, it indicates that we installed three additional lines, numbers Crawford 2330, Crawford 2331, and Crawford 2343; also equipped with headbands and receivers. On October 22nd of 1930, we removed the three lines mentioned, 2330, 2331 and 2343.

Government's Exhibit No. O-33, our record indicates that on October 22nd, of 1930, we removed two lines from the key cabinet, Crawford 7213 and Crawford 7214.

Government's Exhibit Nos. O-31 and O-32 indicate that we revised the cabinet, taking out the one and putting in a new cabinet on December 6, 1930; this cabinet being equipped so that five outgoing calls could be handled at one time; key thrown and the operator talk to all five lines at one time. This was equipped with an operator's breast plate and receiver.

282 Government's Exhibit No. O-33 indicates that on December 18, 1930, we changed the telephone numbers on the lines Crawford 7215 to 19, inclusive, to Crawford 7213 to 17, inclusive.

Government's Exhibit No. O-31 indicates that on 9/29/31 we changed the service on Crawford 7213 to 7217 from one-way to two-way service.

Government's Exhibit No. O-31 indicates that on September 17, of 1933, we changed the location of the key cabinet remaining in the same premises.

Government's Exhibit No. O-32 indicates that on August 7th of 1934, we removed the private line from this key cabinet.

Exhibits Nos. O-33 and O-35 indicate that on September 27th of 1934, we changed Crawford 7212 from an instrument to a line terminating in the key cabinet and removed the operator's breast plate and receiver.

Government's Exhibit No. O-34 indicates that on August 19th, 1935, we installed a terminal to our long distance switchboard at 111 West Washington Street, enabling the customer to make toll calls without going through our local central office.

Government's Exhibit No. O-34 indicates that on October 3, of 1935, we installed a second long distance terminal.

Government's Exhibits Nos. O-33 and O-36, indicate that on December 5, 1935, we removed five trunk lines from the cabinet.

Government's Exhibit O-34 indicates that on December 5th, of 1935, the two long distance terminals were removed.

283 Government's Exhibit O-36 indicates that on November 17th of 1936, billing for the key cabinet was increased for two private lines from Glencoe to terminate in the cabinet.

Government's Exhibit O-36 indicates that on December 15th of 1937, one key was removed from the key cabinet because of a private line from Cicero, Illinois, that was discontinued.

Government's Exhibit O-35 indicates that on August 1, of 1938, we transferred this service from 2135 South Pulaski to 4715 Irving Park Road on the second floor, installing, on this same record, four central office lines, Kildare 7140 to 3, inclusive, and a key cabinet with two instruments for answering calls terminating on this key cabinet.

Mr. Thompson: We move to strike all this testimony on the same grounds of our objection.

The Court: Motion denied.

The Witness: Government's Exhibit No. O-38, the record indicates that on September 21, of 1931, we installed a key cabinet for a private line, including four private lines.

Exhibits O-39 and O-40 continue the record of that cabinet and this cabinet was continued from September 21, 1934, to August 23rd, 1938.

Government's Exhibit Nos. O-41, O-42, O-43, O-44, and O-45, are records of an additional cabinet at 2135 South Pulaski which was used for private line terminating. This cabinet was continued from September 24, 1934, to August 1st, 1938, at the address given. On that day it was moved to 4715 West Irving Prk Road on the second floor.

Government's Exhibits O-47, O-48, O-49, O-50, O-51, O-52, and O-53, are our records of a key cabinet installed at 284 2135 South Pulaski Road on the second floor on September 21, 1934. This cabinet was for termination of the private line and was continued until August 1st, of 1938. On that date it was moved to 4715 West Irving Park Boulevard on the second floor.

Government's Exhibit No. O-54 covers our record of a private line installed at 2135 South Pulaski Road terminating at 4715 West Irving Park Boulevard on the first floor.

Q. Can you indicate with a pin on this map where that wire went?

Mr. Thompson: We don't want to interrupt the sticking of pins in this board, but we object to any further demonstration of that kind, and want our objection to stand to each such operation, on the ground that it is immaterial and does not tend to prove any issue in this case, and no connection with the defendant Johnson.

The Court: Overruled.

Mr. Thompson: May it be understood, your Honor, that the objection will stand, without my repeating it? I don't want to interrupt.

The Court: Each such operation, if any more are made.

The Witness: Government's Exhibits O-55 and O-56 is our record that on March 24, 1936, we installed a private line at 2135 South Pulaski, to 2133 South Kedzie, on the second floor. I know where that address is.

(Witness complies with request to put pin in map where wire went.)

This private line continued at that address until August 1, 1938.

285 Government's Exhibits O-57 and O-58 is our record showing that on March 24, 1936, we installed an extension on a private line from 2135 South Pulaski to 4715

Irving Park Boulevard, to 3332 North Milwaukee, on the second floor.

By "extension" I mean it was a line connected to the other line, so that there are three answering points; this line went out to 2135 South Pulaski, to 4715 Irving Park Boulevard, and to 3332 North Milwaukee.

(Witness places pin in board indicating 3332 N. Milwaukee.)

The Witness: I can explain by use of these pins how this wire went from where to where. The wire runs from 2135 Pulaski to 4715 Irving Park; 2135 South Crawford Avenue to 4715 Irving Park, to 3332 Milwaukee, all three points being on the same line. Crawford Avenue was changed to Pulaski Road; I am not sure of the date; within the last four or five years.

Government's Exhibits O-59 and O-60 is our record of a private line installed March 24, 1936, extending the private line from 3332 North Milwaukee avenue to 4721 North Kedzie, on the second floor.

(Witness indicates by pin on map the latter address.)

Government's Exhibits O-61 and O-62 is our record of a private line installed on March 25, 1935, one at the end of 2135 South Pulaski Road, and the other station at 6245 Cottage Grove, on the second floor.

(Witness indicates by pin on map where that address is.)

Government's Exhibits O-63 and O-64 is our record of a private line installed on April 10, 1936, at 2135 South Pulaski to 1205 North Dearborn Street, in the basement of the premises, with an extension to the second floor.

286 (Witness indicates by pin on map where that location is.)

Government's Exhibit O-65 is our record of a private line installed on April 28, 1936, from 2141 South Pulaski on the second floor, to 4020 Ogden Avenue, on the first floor.

(Witness indicates where that is on map.)

Government's Exhibits O-66 and O-67 cover our record of an extension added to the private line at 6245 Cottage Grove to 5325 South Lake Park Avenue, on the second floor. I have already put a pin in the map to indicate this location.

(Witness indicates the location of that extension from that address.)

I have just put in the address 5325 South Lake Park.

Government's Exhibit O-68 is our record of an extension added to a private line at 4715 Irving Park Road, on the first floor, to 6825 North Milwaukee.

(Witness indicates where this address—6825 North Milwaukee—is.)

I am not acquainted with the place out there.

Government's Exhibits O-69 and O-70 is our record of a private line installed on August 20, 1936, from 2135 South Pulaski to 2141 South Pulaski, second floor. There are already pins here for 2141. 2141 would be right below this one.

(Witness puts pin as closely as he can to that location.)

Government's Exhibits O-71, O-72 and O-73 is our record of an extension installed on August 26, 1938, from a 287 private line at 6825 Milwaukee to 4301 North Harlem.

I have already indicated 6825 Milwaukee.

(Witness points out where he located it.)

I can indicate on the map the place to which a private line went from there. (Indicating.) 4301 North Harlem.

The Court: The Court will take judicial notice that it is five and three-quarter miles north.

Government's Exhibit O-74 is our record of a private line installed on May 20, 1937, as an extension of the private line at 4721 North Kedzie to 3332 North Milwaukee. I have already placed a pin in the map at 4721 North Kedzie. The new address is 3332 North Milwaukee.

Government's Exhibit O-87 indicates that on August 12, 1936, we installed a private line from 2135 South Pulaski Road, on the second floor, to 11901 Vincennes Avenue, in Blue Island.

Government's Exhibits O-75 and O-76 is our record of a private line installed on July 2nd, 1937, between 2133 South Kedzie, on the second floor, and 3209 West Ogden, on the first floor.

Government's Exhibit O-77 is our record of a private line installed on February 11, 1938, between 2135 South Pulaski Road and 2141 South Pulaski Road. That is already on there, those two addresses have them on.

Government's Exhibits O-78 and O-79 is our record of a private line installed on February 11, 1938, from 2135 South Pulaski to 2133 South Kedzie, on the second floor.

I have already mentioned that address.

288- Government's Exhibit O-88 is our record of a pri-

vate line installed on February 11, 1938, between 2135 South Pulaski and 4020 West Ogden. I have mentioned that address before.

Government's Exhibits O-81 and O-82 is our record of a private line installed on February 11, 1938, as an extension of a private line from 4721 North Kedzie to 3946 West School, on the second floor.

Government's Exhibits O-83 and O-84 is our record of a private line installed on February 23, 1938, from 2135 South Pulaski to 4715 West Irving Park Road, on the first floor. I have mentioned that address previously.

Government's Exhibits O-85 and O-86 is our record of a private line installed on February 23, 1938, as an extension on another private line from 4715 West Irving Park on the first floor, to 3946 West School, on the second floor. I have mentioned that address before.

Government's Exhibits O-88 and O-90 is our record of a private line installed on March 9, 1938, an extension of a private line at 6245 South Cottage Grove to 5325 South Lake Park Avenue, on the second floor. I have mentioned that address before.

Government's Exhibits O-90 and O-91 is our record of a private line installed on March 9, 1938, from 2135 South Pulaski Road to 6245 Cottage Grove, on the second. I have mentioned this address before.

Government's Exhibits O-92, O-93, and O-94 is our record of a private line installed at 2135 South Pulaski to 289 1205 North Dearborn, on the second floor—installed on March 9, 1938. I have mentioned that address before.

Government's Exhibit O-95 is our record of a private line installed on March 14, 1938, between 2135 South Pulaski Road and the southeast corner of Dundee and Sunset Road, in Glencoe.

Government's Exhibits O-96 and O-97 is our record of a private line installed on March 15, 1938, as an extension of a private line from 4721 North Kedzie, on the second floor, extending it to 7515 North Clark Street.

Government's Exhibits O-98 and O-99 is our record of a private line installed on May 27, 1938, from 2135 South Pulaski Road to the northwest corner of Devon and Lincoln, in Lincolnwood.

Government's Exhibits O-100, O-101, O-102, and O-103 is our record of a private line installed on June 10, 1938,

between 2135 South Pulaski and the northwest corner of Devon and Lincoln, in Lincolnwood.

Mr. Plunkett: Q. Was this account under your supervision?

Mr. Thompson: I move to strike all of this on the same ground as mentioned in our objection.

The Court: Denied.

The Witness: It was until August 1st, of 1938.

I am manager of the LaFayette unit and this one was under my jurisdiction until August 1, 1938.

We transferred the key cabinet equipment to 4715 Irving Park Boulevard, which then transferred the account to another district. We transferred it from 2135 South Pulaski Road.

290 I mean by that that this first pin I put in the map at the Central location of these private wires was moved up to 4715 Irving Park. I have a personal recollection of this account. The only person I knew in connection with the account was Mr. Morgan. That is the individual whose picture I identified previously. I came to know him over the telephone with reference to the account. In speaking over the telephone, he identified himself either as Morgan or as Frank-Vase. I did have occasion to visit him coincident with the moving of the equipment to 4715 Irving Park Road.

Mr. Morgan called me on the day that the equipment had been installed and he said he wished I would come up because he didn't believe it was entirely as I had represented it to be. I went up there and found the equipment on the second floor at 4715; it was an office room. Quite a large room.

It was a transmitter and a key for the operation of the transmitter, together with the two key cabinets I have referred to. A key cabinet is a small box, in this case about eight inches long by, maybe, three or three and a half inches wide, by three and a half inches high, in this case with six keys by which we can connect lines, and can throw keys and make calls through to the next one. There was a telephone instrument connected with that; I believe they are hand sets; I can tell from the record.

There was a teletypewriter. I saw the same people
291 that I previously mentioned at 2135 South Pulaski:

Mr. Morgan and a party that he called "Roy," and a man who appeared to me to be a workman. I did overhear

a conversation between Morgan and Roy on those premises at that time.

I don't remember any of the conversation. It was something regarding one of the locations at which we had telephone service.

After I left the office Mr. Bentley Moore of the telephone company took over jurisdiction of this account. It went into the division of the telephone company known as our Irving-Kildare district.

Cross-Examination by Mr. Thompson.

I have worked for the telephone company since the spring of 1929. I have been working for them through all the period from that time up to date here in Chicago.

I did not produce all these records and a lot more in the Annenberg investigation.

I did not know that all these places I got marked with little red buttons on this map here are horse parlors or bookies. I do not know that of my own knowledge.

I do not know how many telephones the Illinois Bell had in bookies in this same period I have been talking about in Chicago.

292 Of my own knowledge, I never installed a telephone in any place that I knew was a bookie. I don't believe I know what a bookie is. I never placed a bet in a bookie; I don't know.

I do not know any of these men here in the court room sitting at the table where you are sitting, or at the table to your right here. To my knowledge, I have had no dealings with any of these men in connection with this installation of telephones I have been testifying about.

The man that told me his name was Morgan when talking to me about his account, called himself Vase on one of the two occasions; he also called himself Morgan. I didn't make any inquiry about that inconsistency. He would say, "This is Vase talking," or "This is Morgan talking." He would announce himself at the beginning of our conversation. At the beginning of the conversation he would announce himself one way or the other. I knew it was the same fellow which ever way he announced himself. I believe he gave the name of Morgan the first time he made contact with me. I was talking with him over the telephone; I don't know who I was talking to. I met him personally within two or three months—then I met him

face to face; he told me his name was Morgan. I believe he had called himself Vase once or twice up to that time; that was before I met him. I didn't make any comment during the first conversation when he called himself something else than Morgan. I don't believe I can remember

how many conversations I had with the man named
293 Morgan before the same voice called itself Vase. My first conversation with the man on the 'phone who identified himself as Morgan, as I remember, was as early as 1938. This all started way back in 1930, but we had received orders from other people too, prior to that time. These orders have to do with the Vase account that I have been testifying about; I was referred to Mr. Morgan. When this account was first opened up, a man by the name of Vase opened it up. He did not open it up with me personally.

Government's Exhibit Number O-31 shows the application was taken by Mr. H. L. Rank, who was in our employ. It shows it was taken from a party who purported to be Frank Vase. I don't know whether it was or was not Frank Vase. In other words, the records simply show an account opened in the name of Frank Vase—by a party who represented himself to be Frank Vase. We would ask the name in preparing the application. I don't know anything about the person or identity of the account, only what that record shows to me at the opening of the account.

I had no personal contacts with anyone other than Morgan who was looking after that account. The first time I had personal contact face to face with anybody connected with the account was in 1938 when I contacted Mr. Morgan. I was familiar with the preparation and the record on the cards; the cards are kept in the regular course of business. I know nothing about it, except what is on those cards.

Mr. H. L. Rank is still in our employ; he took this application. Mr. Rank checked Frank Vase's credit when
294 this account was opened; I mean the preliminary investigation to determine if we had any previous bills under this name would be at the time he took the application. Mr. Rank okayed the credit; I believe that is his handwriting.

This memorandum that I was reading from, I was asked by the United States Attorney to prepare it; to interpret the record while I had control. My interpretation covers the information up to August 1st, 1938, when it went to another man. It covers the essential information regarding

the changes and revision of equipment. There are changes in telephone numbers that have been effected and referred to. There is information regarding the other telephone service he had at the time of the application and some changes that were effected by ordinance, such as the change from Crawford Avenue to Pulaski Road. That was just a change of a street name. The signed request to change the account from Frank Vase to John Flanagan according to O-126-A was dated September 11, 1939. The signed request was not signed by Frank Vase at all. The person who purported to be John Flanagan indicated that he would accept the responsibility for that change.

The exhibit says, "In consideration of the Illinois Bell Telephone Company assigning the telephone number to blank and number blank, I agree to release the said number upon the request of said company and indemnify safe and harmless said company against any claim of suit by blank, its former subscriber, because of the assignment of said number to me." The name John Flanagan appears thereon.

Every subscriber does not sign that. I don't know why 295 we had a special one signed by Mr. Flanagan. I didn't

handle that transaction personally. I don't know who signed this document, excepting the name is John Flanagan; that is all I know about it. The present subscriber did not sign the blank space on there where the present subscriber would ordinarily sign. I do not know if Mr. Vase was still alive when this transaction took place on September 11, 1939. That had to do with only one 'phone at Crawford 1066. That is at 4020 West Ogden Avenue.

I don't know anything about who owned these properties where these 'phones were installed.

I do not know what use was made of the facilities we installed. All I know about is what I testified to from the records that were before me. I read the symbols and other data that is written on these records, that is all I know about it.

Redirect Examination by Mr. Plunkett.

Q. You were asked about this John Flanagan change there on September 11, 1939, and his telephone number at that time was Crawford 1066?

A. Yes. At 4020 Ogden Avenue. The telephone number prior to 1066 at 4020 Ogden Avenue, the record shows to be Rockwell 5900. The change was made from Rockwell 5900 to Crawford 1066 in March 10, 1939.

Mr. Plunkett: Now, if the Court please, the Government will offer in evidence EXHIBITS O-31 to O-124, inclusive, and EXHIBITS O-126, O-127, and O-126-A, inclusive, and O-125.

296 Mr. Thompson: We object to O-31 to O-124, inclusive, and O-126 as immaterial, as having no connection with any defendant in this case; and we object to O-126-A as not having been identified with any defendant in this case; and if the identity of name identifies one of the defendants, then we object on behalf of all the other defendants, as there being no connection; we object to O-127 for the same reason as O-126-A.

We object to all of these documents as being mere duplication and cumulative evidence as to this witness' testimony insofar as the witness' testimony relates to the documents; and in all other respects the material and matter of the documents has not been presented and it is unintelligible to anyone except when it is interpreted by one familiar with the symbols, and so forth; the documents do not in any way tend to support the issues in this case, and are outside the bill of particulars.

The Court: Overruled.

(Said instruments so offered and received in evidence were thereupon marked GOVERNMENT'S EXHIBITS O-31 TO O-124, INCLUSIVE, AND O-126, O-127, O-126-A, AND O-125.)

297 BENTLEY H. MOORE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Bentley H. Moore; I live in Chicago, Illinois. I am employed with the Illinois Bell Telephone Company as local manager. I was local manager of the Irving-Kildare office of the company. I was local manager from January 1, 1934, until about August 21, 1938.

I am familiar with the Frank Vase account. I recall that account coming into our office from somewhere else in the city. It was moved into 4715 Irving Park Boulevard.

I have seen Government's Exhibits O-31 to O-124, inclusive, before. I have previously, at the request of Gov-

ernment's counsel, gone over those exhibits and prepared notes thereon for the purpose of stating what those records show with relation to that service. I can from my notes and the exhibits state the changes in service with respect to private wires going into different locations from the address 4715 Irving Park Road. This came under my control August 1, 1938.

Mr. Plunkett: This is a continuation, if the Court please, from the time of August 1st, when the last witness stopped.

Mr. Thompson: Now, to save time, if the Court please, we want to let the same objection stand to this witness' testimony as we made to the other.

298 The Court: That may be. Overruled.

The Witness: I have here a record of a private line used for broadcasting purposes, going in August 1, 1938. The number of the exhibit is O-54.

The number was 36017, from 4715 West Irving Park, second floor, to 4715 West Irving Park, first floor. That private line was discontinued on November 2, 1939.

I have a record of Government's Exhibits O-55 and O-56, going in August 1, 1938, private line number 36012, from 4020 West Ogden Avenue, first floor, to 2133 South Kedzie Avenue, second floor. I have a record here of moving station 1, first telephone on that private line, to 4715 West Irving Park, second floor, on October 26, 1938. I have another record of moving the first station on that private line to 4020 West Ogden, the first floor, on December 6, 1938. That private line was discontinued on November 6, 1939.

On Government's Exhibit O-57 and O-58 I have a record of a private line going in August 1, 1938, the number 36011, from 3332 North Milwaukee Avenue, second floor, to 3946 West School Street, the second floor. That was an extension on another private line running to 3332 Milwaukee. That line was discontinued September 20, 1939.

With reference to Government's Exhibits O-59 and O-60, this line went in August 1, 1938, the number of the private line was 36015, from 4715 West Irving Park, second floor, to 4011 North Monticello, the first floor. This line 299 was discontinued on September 28, 1939.

Government's Exhibits O-61 and O-62 was put in August 1st, 1938, the private line number 36014, from 5325 South Lake Park Avenue, the first floor, to 6245 South Cottage Grove Avenue, the second floor. That was an extension

on another private line terminating at 5325 South Lake Park. That line was discontinued September 8, 1939.

On Government's Exhibits O-63 and O-64, put in August 1, 1938, private line number 36000, from 4715 West Irving Park, second floor, to 1205 North Dearborn, in the basement. The station at 1205 North Dearborn had an extension telephone running into the same building. That private line was discontinued September 28, 1939.

Government's Exhibit O-65 was put in service August 1, 1938, private line number 36003, from 2141 South Pulaski, first floor, to 4020 West Ogden, first floor. That was an extension on another private line running into 2141 South Pulaski. That private line was discontinued September 23rd, 1938.

Government's Exhibits O-66 and O-67 put in service August 1, 1938, the private line number was 36006, from 4715 West Irving Park, second floor, to 5325 South Lake Park, first floor. That was discontinued on August 8, 1939.

Government's Exhibits O-69 and O-70, put in service August 1, 1938, the private line number 36004, from 4715 West Irving Park, the second floor, to 2141 South Pulaski, the first floor. That was discontinued September 23rd, 1938.

300 Government's Exhibits O-71, O-72 and O-73 was put in service August 1, 1938, the private line number 36008, from 4715 West Irving Park, the second floor, to 4301 North Harlem Avenue, the first floor. That was discontinued October 26, 1939.

Government's Exhibit number O-74 placed in service August 1, 1938, private line number 36002, from 4715 West Irving Park, the second floor, to 3332 North Milwaukee, the second floor. That service was discontinued September 28, 1939.

Government's Exhibits O-96 and O-97, installed August 1, 1938, private line number 36001, from 4715 West Irving Park, the second floor, to 7515 North Clark, the first floor. Discontinued September 8, 1939.

Government's Exhibits O-98 and O-99, put in service August 1, 1938, private line number 36016, from 4715 West Irving Park, the second floor, to the northwest corner of Dearborn and Lincoln Avenues in Lincolnwood, Illinois, first floor. Discontinued September 28, 1939.

Government's Exhibit O-107, installed August 1, 1938, private line number 36005, from 4715 West Irving Park

Road, the second floor, to 7212 Circle Avenue, Forest Park, Illinois, the first floor. That was discontinued on November 10, 1938.

Government's Exhibit O-108, installed on August 1, 1938, private line number 36009, from 4011 North Monticello Avenue, the first floor, to 4721 North Kedzie Avenue, the second floor. That was an extension on a private line terminating into 4011 North Monticello Avenue, the 301 first floor. That service was discontinued September 28, 1939.

Government's Exhibit O-109, installed August 1, 1938, private line number 36007, from 4715 West Irving Park Road, the second floor, to 6825 North Milwaukee Avenue, first floor, Niles, Illinois. That was discontinued September 27, 1938.

Government's Exhibit O-110, installed December 6, 1938, private line number 36018, from 4715 West Irving Park Road, the second floor, to 4020 West Ogden Avenue, the first floor. That was discontinued on November 27, 1939.

Government's Exhibit O-111, installed 12/16/38, private line No. 36019, from 4715 West Irving Park Road, first floor, to 4837 North Elston Avenue, basement. That was an extension on a private line terminating at 4715 West Irving Park Road, first floor, and that was discontinued February 7, 1940.

Government's Exhibits O-112, O-113, installed December 16, 1938, private line No. 36020, from 4715 West Irving Park Road, the second floor, to 7214 Circle Avenue, Forest Park, Illinois, the first floor. Discontinued August 28, 1938.

Government's Exhibit O-114, installed June 7th, 1939, private line No. 36023, from 4715 West Irving Park, the second floor, to 1219 Orchard Avenue, Maywood, Illinois, first floor. That was discontinued August 28, 1939.

Government's Exhibit O-74 and Government's Exhibit O-76, installed August 1, 1938, private line No. 36013, 302 from 2133 South Kedzie Avenue, the second floor, to 3209 West Ogden Avenue, the first floor. That was discontinued November 6, 1939. That was an extension on another private line terminating at 2133 South Kedzie, second floor.

With reference to Government's Exhibits O-50, O-51, O-52, O-53, installed August 1, 1938, key cabinet No. 136,

located at 4715 West Irving Park Road, the second floor. Discontinued February 7, 1940.

Government's Exhibits O-44, O-45 and O-46, installed August 1, 1938, key cabinet No. 157, located at 4715 West Irving Park Road, the second floor, also discontinued February 7, 1940.

Government's Exhibit O-77, put in service August 1, 1938, private line No. 36508, from 4715 West Irving Park Road, the second floor, to 2141 South Pulaski, the first floor. Discontinued September 23, 1938.

Government's Exhibit O-78 and Government's Exhibit O-79, installed August 1, 1938, private line No. 36507, from 4020 West Ogden, first floor, to 2133 South Kedzie Avenue, the second floor. That was an extension on a private line terminating at 4020 West Ogden, the first floor. On October 26, 1938, station 1 of this private line was moved to 4715 Irving Park, the second floor. On December 6, 1938, station 1 was again moved, this time to 4020 West Ogden, the first floor.

302 Government's Exhibit O-80, installed August 1, 1938, private line No. 36505, from 2141 South Pulaski, the first floor, to 4020 West Ogden, the first floor. That was an extension on a private line terminating at 2141 South Pulaski, the first floor, and it was discontinued September 12, 1938.

Government's Exhibits O-81 and O-82, installed August 1, 1938, private line No. 36504, from 4715 West Irving Park, the second floor, to 4011 North Monticello Avenue, the first floor. Discontinued February 7, 1940.

Government's Exhibits O-83 and O-84, installed August 1, 1938, private line No. 36502, from 4715 West Irving Park Road, the second floor, to 4715 West Irving Park Road, the first floor. Discontinued February 7, 1940.

Government's Exhibits O-85 and O-86, installed August 1, 1938, private line No. 36503, from 4715 West Irving Park Road, the second floor, to 3946 West School Street, the second floor; on December 6, 1938, station 1 of that private line was moved to the first floor and terminating as another private line which terminated in the first floor at that address. That was discontinued February 7, 1940.

Government's Exhibits O-88 and O-89, installed August 1, 1938, private line No. 36501, from 4715 West Irving Park Road, the second floor, to 5235 South Lake Park Avenue, the first floor. That was discontinued August 28, 1939.

Government's Exhibits O-90 and O-91, installed August 1, 1938, private line No. 36500, from 5325 South Lake Park Avenue, first floor, to 6245 South Cottage Grove Avenue, the second floor. That was discontinued on September 8, 1939, and was an extension on a private line terminating at 5325 South Lake Park Avenue, the first floor.

Government's Exhibits O-92 and O-93, installed August 1, 1938, private line No. 36506, from 4715 West Irving Park Road, the second floor, to 1205 North Dearborn, the second floor. The second station on that private line had an extension on it into the same building. That was discontinued February 7, 1940.

Government's Exhibits O-100, O-102, and O-103, installed August 1, 1938, private line No. 36511, from 4715 West Irving Park Road, the second floor, to the northwest corner of Devon and Lincoln, Lincolnwood, Illinois, first floor; discontinued February 7, 1940.

Government's Exhibit O-115, installed August 1, 1938, private line No. 36509, from 4715 West Irving Park Road, the second floor, to 7212 Circle Avenue, Forest Park, Illinois, first floor. Discontinued November 10, 1938.

Government's Exhibits O-116 and O-117, installed August 1, 1938, private line No. 36510, from 4011 North Monticello, the first floor, to 4721 North Kedzie Avenue, the second floor. Discontinued February 7, 1940. That was an extension from another private line terminating at 4011 North Monticello Avenue, the first floor.

Government's Exhibit O-118, installed December 6, 1938, private line No. 36512, from 4715 West Irving Park, 305 the second floor, to 4020 West Ogden Avenue, the first floor. Discontinued November 27, 1939.

Government's Exhibits O-119 and O-120, installed February 10, 1938, private line No. 36513, 4715 West Irving Park, the second floor, to 4837 North Elston Avenue, in the basement. Discontinued February 7, 1940.

Government's Exhibits O-121, O-122, and O-123, installed December 16, 1938, a private line, No. 36514, from 4715 West Irving Park, second floor, to 7214 Circle Avenue, Forest Park, Illinois, on the second floor; discontinued August 28, 1939.

Government's Exhibit O-124, installed June 8, 1939, private line No. 36515, from 4837 North Elston Avenue, in the basement, to 4301 North Harlem, first floor; discontinued February 7, 1940. That was an extension on another private

line, terminating at 4537 North Elston Avenue, in the basement.

306 At the close of the morning session I did describe two different types of wires that were run from the address at 4715 Irving Park Road to other locations. One type is a broadcasting type of private wire and the other is a talking type of private wire. The talking type of private line terminates at 4715 Irving Park. The talking type of private line terminates in a key cabinet. In other words, the person at the key cabinet is enabled, by throwing a key, to have a conversation over that phone with the person at the end of that private wire. And the other type of private wire I was testifying about is the broadcasting type, which at 4715 Irving Park is terminated in a speaking apparatus and transmitter. I can't exactly describe what type transmitter it is—I am not a technical man—except that it was known to me as a transmitter. In talking into this transmitter the voice would be carried over this line to these other points. That is one way service and the other was two way service. The exhibits that take in the key cabinet equipment are Exhibits O-50, O-51, O-52, O-53; O-44, O-45, O-56; O-77, O-78, O-79, O-80, O-81, O-82, O-83, O-84, O-85; O-86, O-88, O-89, O-90, O-91, O-92, O-93, O-100, O-101, O-102, O-103; O-115, O-116, O-117, O-118, O-119, O-120, O-121, O-122, O-123, O-124. All the other exhibits in that group refer to broadcasting equipment.

Other service at 4715 Irving Park was known as exchange service. That is, Central office service is the service that requires the assistance of an operator—just the regular, usual, every day telephone service.

The exchange service at 4715 Irving Park on August 1st, 1938, was a key cabinet with a capacity of six
307 central office lines installed on the second floor and at that time only four lines were installed, four central office lines.

The numbers of these lines were Kildare 7140, 7141, 7142 and 7143. I have some changes after that. On August 31, 1938, this key cabinet and the four lines, including this Kildare 7140, et cetera, were placed on suspended rate; that is, they were discontinued as far as being open was concerned. On November 23, 1938, this suspended rate was stopped and telephones were connected for use again.

On December 14, 1938, these telephone numbers, Kildare 7142 and 7143, were moved from the key cabinet to which I

referred to another key cabinet on the same premises. On August 18, 1939, we changed the telephone numbers from Kildare 7140, 7141, 7142 and 7143, to Palisade 5150, 5151, 5152 and 5153, and on February 2, 1939, this key cabinet and the four lines terminating into this Palisade 5150, 5151, 5152 and 5153 were again put on this suspended rate, and on February 7, 1940, all of the service was terminated.

I had contact with a Mr. Morgan concerning the service described at 4715 Irving Park. He did not give me any other name. Government's Exhibit O-125 is Mr. Morgan, that I have just testified about.

Cross Examination by Mr. Thompson.

Some of the phones I have just described were new installations on August 1, 1939. I think all of those at the time, August 1, 1938, were moves from one address to another and those at later dates were new installations.

Mr. Thompson: I move to strike the testimony on the ground stated for the previous witness.

The Court: Denied.

308 DONALD BLAKE, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Campbell.

My name is Donald Blake. I live at 8901 South Leavitt Street. I am a lawyer and business executive. I know the defendant, Mr. Creighton. I see him in the court room (indicating defendant Creighton). I should say that I have known him three or four years. I first met him in the Club Southland at 63rd and Cottage Grove. This meeting occurred three or four years ago, perhaps 1936 or '37. I had a conversation with him at that time. I believe there were a number of people around—I would not recall, at this time, who they were. It is possible Ralph Maye was there. He may have introduced me to Mr. Creighton, although I am hazy as to who introduced me to him. I don't believe I can fix the date of this talk other than '36 and '37.

The conversation related to permitting me to cash checks for gambling losses. Mr. Creighton questioned me as to

the amount I wanted as a limit on any checks that I might cash and I think it was mutually agreed a one hundred dollar limit would be established. I could cash checks up to that amount. I did thereafter cash checks pursuant to that agreement at the Club Southland off and on from about 1936, right through to 1939.

I frequented the Club Southland at intervals between the first conversation and say January, 1940. This club was located on the second floor. The marble stairway is divided about three-quarters of the floor up, a double stairway up to the second floor. You then entered a reception room that had a desk on it, had a bell on the desk. Ring the bell and a steel door would be opened by a man who would escort you into a small chamber where you were searched, for what I don't know. And upon being searched the signal was given to a man inside of another door, who opened that door and you were admitted to the larger room where the gambling was done.

309 I did go through this routine of getting in and out of this Club Southland for a considerable period of time. I finally mentioned to Mr. Creighton I did not like to be searched so frequently. He gave instructions I should be passed without searching. On the right as you went in there was a check room for checking hats and coats. Directly ahead were a tier of card tables or dice tables. I saw three or four of them. Then there were some roulette tables, black jack tables, bird cages. On the side wall were the racing sheets and chairs. The rear or east side was a series of cages for receiving and paying racing bets. On the northeast corner was a small office. The office was equipped with a table, a chair, a cabinet of some sort. It might have been a safe but I am not sure.

Originally, a number of years ago, I saw Ralph Mayo in the smaller office from time to time and later on Mr. Creighton.

In the small room where I had been searched there was a ladder going up above this chamber and at times I had seen one or more men up there. The only means of ingress or egress was a small ladder that extended up through the ceiling in this small entry room. I have seen someone in that upper room that I can't describe.

Mr. Thompson: We believe this is immaterial and prejudicial to the other defendants and as having no bearing whatever on any issue in this case. Can't possibly prove or

tend to prove the charge of income of Mr. Johnson or any attempt to evade income tax.

The Court: Overruled.

The Witness: I saw it occupied. I never was up there. I could see from the gambling floor that it had small slots in it that overlooked the gambling room. This room that I saw in the Southland I should judge would be about 75 by 150. At one time or another there was Keno in the evenings, slot machines from time to time. They would accommodate a mixture of coins. At one time there was as many as forty or fifty. At other times there were 310 not any.

I have seen defendant Creighton during the years '36 to '40 in the building at 119th and Vincennes and 9730 South Western Avenue. I talked with Mr. Creighton at 119th and Vincennes. I think Ralph Mayo was there. Some times Mr. Creighton was there. I did not have any particular conversation with Mr. Creighton at 119th and Vincennes. I did cash checks there. I believe at that time most of them were okayed by Mr. Mayo, although some may have been okayed by Mr. Creighton.

I had a conversation with Mr. Creighton with respect to 9730 Western Avenue at the Club Southland. I would say in April or May, 1939. There were lots of people in the room but none, as I recall, in the immediate vicinity of our conversation. Mr. Creighton advised me that they planned opening up the Club Western on the following Saturday and I told him that I objected to opening the Club Western in that particular part of the city, which happened to be near my home. And told him I did not think that the people in Beverly Hills would stand for it. I certainly did not approve of it and would do everything I could to have it closed.

Mr. Thompson: We object to all that conversation as immaterial and prejudicial to the other defendants and as having no bearing whatever on any issue in this case and can't possibly prove or tend to prove the income of Mr. Johnson or any attempt to evade income tax.

The Court: It may be received.

The Witness: Mr. Creighton protested that they ran a very clean gambling house and had a fine class of people there. I told him that we did not want the type of people that would be drawn to a gambling house. I said it would lead to hold-ups and burglaries in the residential section.

We did not want them drawn up there. He again protested that the class of people, or kind of place they ran would not cater or countenance the type of people I was objecting to.

311 Mr. Thompson: We object to that conversation as prejudicial to the Defendant Johnson and to the others and to Mr. Creighton, and having no bearing on any issue in this case and can't possibly prove the issues.

The Court: Its relevant. I can't see that it is material except the statement of Mr. Creighton that they were going to open up the house. The Jury are instructed to disregard the statements of the witness as to the character of the people that would be in the neighborhood. Put that out of your mind and try this case as though it had never happened.

The Witness: Following that conversation I did have occasion to visit 9730 South Western Avenue. I saw dice tables, roulette tables, black jack tables, chuck-a-luck, racing sheets, a complete lunch counter, and cashiers' cages.

I saw Mr. Creighton there and a number of others whom I knew by sight but not by name. I saw Mr. Creighton giving instructions, supervising, particularly the dice tables, and checking the cash items.

There was a money booth at 9730 South Western Avenue. I did see him in the booth. There was enough room for two at a time.

I cashed checks and gambled at the Club Western. I gambled and cashed checks at 119th and Vincennes. There was a money booth at the Club Southland. I saw Mr. Creighton in there checking cash.

At the Club Southland they had several tables, one of which was called the money game and the other the check game, the check game being fifty cents minimum, the money game a dollar minimum, with \$5 bills used to a considerable extent, and the money game normally had stacks of \$5 bills available for use and play. When the play got particularly heavy \$20 bills were also used; occasionally \$100 bills. I did not see any other denominations of bills in use at the Club Southland other than fives, twenties
312 and one hundreds. In pay-offs there were occasionally thousand dollar bills. I once had a transaction at the Club Southland where a thousand dollar bill was involved. Probably around 1938, I should say, I had won some money and I left it there with them overnight and

the following day I returned and was given the money and an escort to take it to the bank for deposit. Mr. Creighton furnished me with the escort.

When the horse races were on at the Club Southland there was a constant flow of race information, so-called opening lines, the odds quoted, information as to scratches or horses eliminated from the race for one reason or another; gave the running of the race, the results, and then the prices that the horses paid.

Government's Exhibits X-1 to X-138, inclusive, are my cancelled checks. They represent transactions between me and these gambling houses over the period 1936 to 1939, both inclusive. They are checks that I cashed at the gambling houses pursuant to the authorization of Mr. Creighton in accordance with my testimony heretofore.

Mr. Campbell: I offer in evidence GOVERNMENT'S EXHIBITS X-1 to X-138, inclusive.

Mr. Thompson: On behalf of the defendant Johnson there will be no cross-examination. I move to strike the testimony of the witness as having no connection with Mr. Johnson, no relation to his taxable income or any attempt to evade any taxes, and as being in no way material to any issue in this case.

The Court: Motion denied.

Cross-Examination by Mr. Hess.

My office is at 1000 East 67th Street. I am an executive of Charles G. Blake Company, in the monument business at Ellis Avenue and 67th. I have been there since 1930. Myself and family have been in that monument business for nearly fifty years. I lived in Beverly Hills when I was going to the Southland Club. The Southland Club was near my place of business. My best recollection is that the 313 first time I was in the Southland Club would be 1933 or '34. I would say that was about the beginning of my activities in the gambling field and since then I have gambled more or less off and on for amusement and pleasure.

I looked at Government's Exhibits X-1 to 138 before I took the witness stand. I am familiar with them. I cashed Exhibit X-1, being a check for \$100, on August 20, 1936. That is the date it bears. That was after I did some playing. Exhibit 56 was cashed after I had done some playing.

For a while, by agreement with Mr. Creighton, let's say the limit was fixed at \$150 to cash a check. I would frequently perhaps cash a check when I was through playing for \$185 so that I would have some cash on my person, and some times I would go out with the \$35, and other times I would play black jack, or something, and lose the \$35.

These one hundred and thirty-eight checks represent at least one hundred and thirty-eight times that I gambled at these various places. The fact is that I was there on more occasions than that and on many occasions I cashed no checks. I would say I was a consistent loser in the Southland or the 119th and Vincennes or the Western Club over a period of time.

I did do a good deal of winning between the losses and when I won I did not cash any checks. I would come back and gamble again notwithstanding that I lost. I would not say it was kind of in my blood to gamble.

During the period May and June, 1939, I think was probably the longest period of winnings. I did leave money at the club overnight frequently. I didn't like to have large sums of money with me. I did not want to go around in the neighborhood of 63rd and Cottage Grove, or any other neighborhood, with a lot of money in my pocket. When I came back the next day I got exactly what I left there for safekeeping, and on that one occasion they gave me a guard to go to the bank to deposit the money.

I think it was in the neighborhood of twelve or thirteen 314 hundred dollars. That was winnings. During the

months of April and May, 1939, I would say, I had a rather consistent series of winnings for that type of enterprise.

Q. In other words, you don't want the court and jury to understand that these Exhibits X-1 to 138 represent the net loss that accrued to you during your gambling transactions at these three places?

A. No, by no means. In other words, there was winnings and losses.

After my first experience at the Southland I went to 119th and Vincennes. I believe I saw Mr. Creighton there several times. That is in Blue Island. The place at 9730 Western Avenue is in the Township of Worth. It is not in Chicago.

After those conversations I had with Mr. Creighton, in which he advised me they were going to open up a room at

97th and Western I eventually did go out there. The Southland had closed. The Chicago place was not running but they were running out in the country. 119th and Vincennes was opened a year or two before the Club Western. The Club Western was opened after my first experience at the Southland.

Subsequent to my conversation with Mr. Creighton about his opening 97th and Western I frequented that place and entertained myself gambling. I was there quite often. I principally played dice. There was a limit of \$100 that you could bet at the crap game. One table had chips and the other had currency. That was the same limit that I observed in the other places. At times I played for those limits.

I don't recall ever having come in there and cashed a check, played, won and walked out with the currency.

I never made inquiry why I was being searched when I came in there. It seemed to be the custom. I assumed the reason was to keep out hold-up men.

315 Mr. Hess: That is all the cross-examination by me,

Your Honor, and I object to the admission of Exhibits X-1 to X-138 on the ground that they do not show or tend to show any net taxable income to Mr. Creighton, and furthermore not under any circumstances to Mr. Johnson as charged in this indictment.

The Court: Overruled.

(Said instruments, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS X-1 to X-138.)

Redirect Examination by Mr. Campbell.

On occasions I would take currency with me to the gambling houses to which I referred in my testimony, so that in addition to these checks there was also currency involved which I took along with me. Over the period of years that I gambled, '36 to '40, there was a loss in my operations.

I live out in the vicinity of Beverly Hills and I am familiar with 9730 South Western Avenue.

(Witness complies with request to place a pin on the location of 9730.)

Recross Examination by Mr. Hess.

I was not acquainted with any of the persons at the Southland any more than I could help. I didn't try to make acquaintances there. I did know some of the persons there by sight more than by name. I don't see anybody at these tables that I shot crap with at the Southland.

HARRY CIESLIK, called as a witness on behalf of the Government, having first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Harry Cieslik. I live at 5832 Medina. In the Spring of 1936 I worked at the Harlem Stables. 316 After I had a talk with a fellow that hangs around the same tavern I do, I went over to the Harlem Stables and tried to get in touch with Mr. Johnson. It took me a couple of days and I finally met him. I had a talk with Johnson at the Harlem Stables. I just told him that I was sent over there by this fellow, Bud Kendrick. I don't know of anything else that was said at that time. Johnson told me to come back in a couple of days. I did. I saw Mr. Johnson again (indicating defendant Johnson). He told me to see Pete Riley. He was on the floor of the Harlem Stables walking around. I seen Pete Riley and he put be to work shilling. I worked as a shill two days at the Harlem Stables. I was getting four dollars a day for working as a shill. I was paid in cash by the paymaster. After I worked two days as a shill I was put on the door to let people in. I worked on the door a couple of weeks. Then we closed up.

I don't remember where I went. I did not talk to Johnson.

I did work at another place than the Stables. It was some place about 7500 North Clark.

I went over to the Dev-Lin at Lincoln and Devon and finally McGrath sent me over to Clark Street. I was a doorman. I stayed there about a month. When I went to 7515 North Clark I saw a fellow on the floor. His first name was Jack.

I do not know of any talk with Johnson before I went

over to 7515 North Clark Street. After I worked on the door at 7515 North Clark I worked at Division and Dearborn. Barney McGrath sent me over there. I saw Mr. Kelly when I got over to the D. and D. Club (indicating the defendant Kelly). I talked to Mr. Kelly there. I told him that Barney McGrath sent me over there, so I went to work. He put me to work as a doorman.

While I was working at the Harlem Stables I may have seen Johnson once or twice. I might have seen him at the D. and D., I don't remember. When I saw him at the Harlem Stables he was just walking around.

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Cross-Examination by Mr. Thompson.

I don't know what bar room I was hanging around when I got this first tip of a job. I go to a lot of places. I don't remember what bar room I was hanging around when this man, I don't even know, told me to go to see Bill Johnson about a job. When you start you hang around with a bunch of fellows and you go from tavern to tavern. I don't know which one it was. I just flit from tavern to tavern, not just hanging around, but go around once or twice a week. When I get off I like to go out, myself. When I was hanging around one of these places I was looking for a job. I never did go around any gambling clubs and this fellow that told me to go hunt for a job told me to go out to the Harlem Stables and that if I saw Mr. Johnson he might give me a job. I went out several times before I found Mr. Johnson. I did not know Bill Johnson. I did not know what kind of fellow I was looking for. I did not know anything about Mr. Johnson at that time.

I inquired for Mr. Johnson at the Harlem Stables. I made three or four trips before I found him. When I did find him I talked about a job. He talked in a friendly way. He didn't know me. He told me he would see what he could do for me and to come around in a day or two. I came over two days later. I found him there but don't think he was there when I got there. I waited for him. I don't remember what time of the night he came. It was late in the evening. When he came I asked if he had been able to find a job for me. He told me to see Mr. Riley. Mr. Riley was the man there at the Harlem Stables just walking around the floor. That is all I seen him doing. He had something to do with arranging the games. I don't

know what he had to do about making payments of bets. He seemed to have charge of the place. I went to him and asked for a job and he gave me one.

I worked two days as a shill. Then he put me on the 318 door. I stayed at the door a while. I saw Mr. Johnson come out occasionally. I was out of work just a couple of weeks when I got another job. I was driving a truck.

I went out to the Dev-Lin Club months later. I was driving a truck a while in the meantime. Then I went to the Dev-Lin. I heard the Dev-Lin was operating in Lincolnwood and I went out there and inquired for a job and got one.

They told me they didn't have any work but I could get a job at 7500 Clark. I went to 7500 Clark. I saw a fellow by the name of Jack. I think he was the floor man. I talked to him. He gave me a job. I worked there about a month as door man. I was at that place when I got a job over at the D. and D. I don't know that Mr. Kelly had called up and asked for an extra door man. I don't know anything about that. I talked to Mr. Kelly who hired me. He kept me working there six months as a door man. I quit working there about September '39 when the place closed about June or July. I don't know that it has been closed ever since.

I have not worked at any gambling club since September. I am back on my old job, driving a truck.

I said I saw Mr. Johnson occasionally in and out of the D. and D. Club. He didn't recognize me that I know of. Everybody coming in would say "Hello". As they would come up I would hold the door open and they would say "Hello" and I would push the door closed and when they came out they would say "Goodbye".

LEO DIDIER, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Leo Didier. I live at 725 Pearson Street, 319 Des Plaines.

I have been at the House of Niles. It was on Milwaukee Avenue, right close to Touhy Avenue. It is not any more. I was parking cars out in the yard. Before I

was parking cars I went in there to play. I talked to Jack Sommers, I believe, about getting a job. I see Jack Sommers here (indicating the defendant Jack Sommers). As far as I can remember it was in August, 1936.

Q. What did Sommers say when you asked him for a job?

A. He says he would have to see Bill Johnson.

Mr. Thompson: We object to any such conversations out of the presence of Mr. Johnson.

The Court: Overruled.

The Witness: After Sommers told me to see Bill Johnson I did see him at the House of Niles. I did talk to Johnson. I asked him for a job. He told me to go out and park cars at four dollars a day. I told him I could not get along on that as I had a big family. "Well", he said, "Make it five dollars". I went to work parking cars at the House of Niles. I worked there about a month. I saw the defendant Hartigan at the House of Niles.

After I finished working at the House of Niles I went over to the Harlem Stables. They closed up the House of Niles and I moved right along over there with them. No one told me to go over to the Harlem Stables. I took care of the yard and parked cars over there. The same work that I was doing at the House of Niles. My working hours were from 12:00 noon until 8:00 in the evening.

I saw the defendant Johnson occasionally at the Harlem Stables. I talked with him over there at different times.

I did speak to him about extra work at night so I 320 could earn more money if I could put in more time.

He finally sent me over to the Villa Moderne, put me on there in the evening. They told me to go see Mr. Wait there. I worked at the Harlem Stables until the following September. When I first started to work at the Harlem Stables I was working one shift eight hours. I worked from 12:00 until 8:00. Then later on I started taking care of cars, working there extra hours in the morning. I spoke to Jack Sommers and he let me clean up the yard, take care of it, and put in extra hours in the morning.

While I was at the Harlem Stables I met a man named Wait. I did talk to him. I asked him about whether there was any chance to get on at the Villa Moderne in the evening. He said I would have to see Mr. Johnson about that. I did see Mr. Johnson. I just asked about extra work, an extra shift in the evening. He sent me out to

the Villa Moderne. I was parking cars there. I don't remember the exact dates, but three or four months. After I worked at the Villa Moderne they were all closed up. That is the last work for them until in the winter of '38.

I went over to the Horse-Shoe in the winter. I saw Jim Hartigan and Mr. Johnson. I did talk to Mr. Johnson. I asked for work. He sent me to Jim Hartigan. He said Jim Hartigan would put me to work. I went to work shilling, from December '38 until May '39.

Cross-Examination by Mr. Thompson.

I have lived at 725 Pearson Street, Des Plaines, for the last six years. Prior to that I lived in Morton Grove. I am a brother of the Mayor of Niles. He has been the Mayor about two years. I have eleven children.

I have known Mr. Johnson quite a while. The House of Niles was operated in the Village of Niles where my brother is Mayor. Mr. Johnson used to play at that house. I didn't know him prior to the time I went to work there. I didn't know who he was.

321 No one suggested that I go over to the House of Niles. I just took it upon myself. I figured there was a chance to work there, so having lost money there I thought perhaps I could. I seen other fellows working there I knew and I thought there was a chance of my working there. I was gambling at the House of Niles. I lost some money there. I did not speak to my brother, who is the Mayor of Niles, about it.

When I went over to Sommers about giving me a job I reminded him that my brother was Mayor. He told me to see Mr. Johnson. Mr. Johnson was not there at the time. I saw Johnson the following evening. I had not been talking to Mr. Johnson prior to that about getting a job. He did josh me about my big family of children but not before that. I told him I had a big family. He wanted to pay me four dollars a day for parking cars and I told him I had this big family to keep and he said, "All right. Make it five". Then I worked there until they closed the place.

Then I went out with the rest of the people who were working there to this new place, Harlem Stables. I worked there until they closed up. I saw Mr. Johnson around there. I worked on his sympathy because of this big family I had. I kept hitting him for higher pay to take care of this large family. I did not keep on gambling.

After I worked there for a while they closed that place. That was the last I worked for him until the winter of '38.

Johnson showed an interest because of this big family I had and joshed me about it. I believe that fact that my brother was Mayor of Niles had something to do with his giving me a job, although my brother never interceded for me, not that I know of.

I don't know what they opened up next after the Harlem Stables closed. I didn't work for them until the following winter. During the summer I was working for myself. In the winter work was slack and I thought perhaps I could have a shift down there working in the evening at the 322 Horse-Shoe at Kedzie and Lawrence. I seen Jim Hartigan down there. I got acquainted with him when we were at the Harlem Stables from seeing him come in and go out. You couldn't help but get acquainted with them. I was promoting myself all the time. I am always trying to.

When I wanted another job I went to the Horse-Shoe to see Jack Sommers and I saw Hartigan there. I went there to get a job. I found Mr. Johnson there again and worked on his sympathy some more. He told them to give me a job and they did. They paid me four dollars. I worked there from the latter part of December '38 to May '39.

I quit working because my work at home was better for me than down there. I couldn't take care of day work and night work. I was working home daytime and down there nights. I did dry cleaning at home.

I worked in gambling houses after May 1939.

I said Johnson sent me out to the Villa Modern,—told me to go out there and get to work. I went out there. I saw Mr. Wait. He said I would have to see Mr. Johnson. After Johnson sent me out there, I did not have to go see Wait. I spoke to Mr. Wait at the Harlem Stables first. I happened to be there. I knew him from seeing him. I was looking for more pay and more work. I know I spoke to Mr. Waite about going out to the Villa Moderne out on Skokie Road a little the other side of Dundee. That was when I was working there in the summer of '37.

I worked at the Villa Moderne about three or four months from eight in the evening until three in the morning. I occasionally saw Johnson around there. I did not keep pestering Johnson for any more and better jobs; after I had them I had all I could take care of. I had no 323 objection to more pay. I got five dollars from eight to three in the morning. Then I went home to bed until

about eight or nine o'clock in the morning. Then I went to Harlem Stables and cleaned up the yard.

I had three jobs then. I cleaned the yard in the forenoon until my shift of parking cars started. They started at noon. My hours were from noon until eight o'clock but I started earlier to get over to the Villa Moderne, at eight o'clock. I had three jobs. Mr. Johnson got all of them for me. He took care of me so I could take care of these eleven kids.

GEORGE H. CERVENKA, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is George H. Cervenka. I live in Berwyn. I am secretary and treasurer of the California Manufacturing Company. During the year 1938 my company had occasion to do some work at the Bon-Air Country Club. We had orders from Mr. Nadherny, the architect. There was approximately \$14,000 involved in that transaction. We made windows, frames, doors and interior finish. We were paid for the work by Mr. Geary at the club, mostly cash I think. There may have been one or two checks.

Government's Exhibit E-89 for identification is a sheet out of our general ledger, just invoices posted to the account under Mr. Nadherny's name.

Government's Exhibit E-89 for identification is part of the permanent record of our company. It is kept under my supervision and control and the entries made on this exhibit were made in the usual and ordinary course of business.

All of the items on the reverse side of Government's 324 Exhibit E-89 are listed as Wheeling, Illinois.

Mr. Thompson: We object to the exhibit on the ground that it is cumulative of the witness' testimony and attempting to corroborate their witness before there is any attempt to attack him; and no connection with any of these defendants. It does not prove or tend to prove any of the issues made by this indictment.

Cross-Examination by Mr. Thompson.

Pine Tree Farm, appearing on that sheet, is some work that we got from Mr. Nadherny, that was delivered to the Pine Tree Farm. I can't say that I know who owns the Pine Tree Farm. I did not deal with anybody except Mr. Nadherny in connection with the Pine Tree Farm. Mr. Nadherny paid for these items of work. I don't remember if it was cash or check.

I don't know that the Pine Tree Farm is the William Skidmore farm. I did not have any dealings with Mr. Skidmore. I do not know him. I never was out to the Pine Tree when this work was being done.

I was at the Bon-Air when I went there after collections for money five or six times, I suppose. Mr. Nadherny told me to ask for Mr. Geary to get my money. I did not go to the Pine Tree Farm to get my money.

Mr. Thompson: We further object to the admission on the ground it contains items other than Wheeling. Without explanation it does not protect the jury from confusion.

The Court: All of these items under Wheeling, Illinois refer to Bon-Air?

A. Yes, sir.

Q. And none of the others?

A. Not as I remember of.

325 Q. What was the work you did out there?

A. It was frames, sash, and interior finish, doors.

The Court: Objection overruled. The items thereon, under the name of Wheeling, Illinois, will be received.

(Said document so offered and received in evidence was marked GOVERNMENT'S EXHIBIT E-89.)

ROBERT E. KLING, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Robert E. Kling. I live at 1618 Catalpa, Chicago. I am comptroller for Albert Pick Company, who sell hotel and restaurant supplies and equipment.

Our company had occasion to supply material to the Bon-Air Country Club in 1939 and furnished equipment for the kitchen and supplies for the restaurant. I was dealing

with an individual by the name of E. H. Wait. My estimate would be that the transaction involved about \$8,000. We were paid for the material and labor.

Government's Exhibit E-32 for identification consisting of four pages of the original ledger cards of the Albert Pick Company re checking transactions with the Bon-Air Catering Company, Wheeling, Illinois, for the period May 3rd, 1938 to August 19th, 1939, inclusive. Those ledger sheets include the transactions of which I have just testified.

We received \$1,000 under date of May 3rd, 1938. We received \$5,000 on June 7th, 1939, and \$2500 on June 20th, 1939. On July 17th I received \$659.68, also on the 7th we received \$1473.12. On July 26th we received \$440.19. On September 5th \$1302.02. On September 18th \$246.93. On November 27th \$77.11. That is all the cash receipts for 1939.

The major portion of the material that was installed 326 at the Bon-Air Country Club was for kitchen equipment, ranges, dish tables, dish warmers, and heavy equipment of that type. The balance was china, glass and silver which is used in the restaurant.

Cross-Examination by Mr. Thompson.

I am not the salesman. I didn't take these orders. I have no personal knowledge as to who placed the orders. I know I directed a letter to Brinks Express Company, directing them to collect for our account the sum of \$5000. That was addressed to Brinks Express Company. They brought back \$5000. I don't know who gave it to them. I understood it was to be the cashier. I don't know where they went to get it. All I know is that they brought it back. Mr. D. Bolton, the salesman, is still in our employ.

STANLEY T. BORAS, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Stanley T. Boras. I live at 1716 North Melvina. I am treasurer of the Amco Corporation. They are in the oil equipment business.

In 1939 we had occasion to do some work at the Bon Air Country Club. We installed an elevated bandstand. We

charged approximately \$4300 for that labor and material. We were paid. The payments were made to me personally at our company's office. Mr. Alguire brought in the payments. I don't know the individuals that might have given him the money. I didn't see him get it.

327 Referring to Government's Exhibit E-81 for identification that is our ledger card. It shows the account with the Lightning Construction Company. That record is kept under my supervision and control. The entries were made in the usual and ordinary course of our business. It discloses the transactions at or about the time they occurred.

Mr. Miller: The Government will offer at this time EXHIBIT E-81.

Cross-Examination by Mr. Thompson.

I never was out at the Bon-Air Country Club. I do happen to know from the records of the company office that we bought material and delivered it to the Bon-Air Country Club, from the shipping information we have, and our service department made the installation at the Bon-Air Country Club. That is what they reported to me and I assume that is correct. I do not know anything about it except what is reported. I do know that somebody brought some money into our office. They paid the bills for it. All I know is from the information that we gathered in the office. I can't say who paid our agent the money except that he brought it into the office, and it was credited to this account with one exception. The first thousand dollars was placed in escrow upon entering into the agreement with Mr. Nadherny and on delivery of the merchandise the money in escrow was released to ourselves. Then it was credited to this account. Mr. Alguire brought that in. I believe it was a certified check. I can't say whose check it was. I know the name of the bank where the escrow was, where the money was held in escrow, and, of course the bank released it in the form of a check to our company. It was not a check of the Lightning Construction Company certified by the bank. It was a cashier's check. I don't remember
328 what bank. I had no personal contact with this job excepting approving the general transactions. I don't know who our agent contacted, or otherwise, excepting his reports to me.

Mr. Thompson: We object to the exhibit as a duplication of the witness' testimony and a duplication of other records already in evidence; in no way tending to prove income taxable to Mr. Johnson, or any attempt to evade income tax. Also object on the ground there is no proof by direct testimony that this expenditure was ever made on behalf of the Bon-Air Country Club.

We move to strike the testimony of the witness.

The Court: The motion is denied to strike the evidence of the witness, but I sustain the objection to the offer of the paper until there is some proof that the work was done on the premises of the Bon-Air Country Club.

R. C. deBETTENCOURT, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Ray C. deBettencourt. I live at 1447 North Dearborn. I am a designer of lighting fixtures. I am employed by the Walter G. Warren Company. They manufacture custom made special lighting fixtures.

Our company had something to do with installing the lighting fixtures at the Bon-Air Country Club in the year 1939. We designed various lighting fixtures for the club interior. They were manufactured and delivered to the Bon-Air Country Club.

The total charge was about \$1800. We were paid. The payments were made to me personally at Mr. Nadherny's office. He was the architect.

Cross-Examination by Mr. Thompson.

The architect's office was on West Roosevelt Road. 329 On one occasion the payment was made by check. The others were made by cash. I couldn't say if it was with Mr. Nadherny's personal check. I received the cash but the check was in an envelope which I gave to my firm. I remember about three occasions that he paid in cash. I went to the club on two occasions to look the job over, so that I could design something that would be consistent with the club. I talked with Mr. Nadherny about it and nobody else. Both trips were for the purpose of making designs.

I saw the material once after it was installed at the club. I did not talk with anybody then about it. I was with friends at the time. I was out there and I just dropped in to look at the complete installation and the finished job. I did not talk to anybody about it.

I sold the job. My conversations were with Mr. Nadherny only. He sent for me. I have done a lot of work for Mr. Nadherny on different occasions. He asked me if I would take care of this job.

I did not have any record of the amount that was paid on this job. I only remember about the total, in the neighborhood of about \$1800. We have records in our books at the office. I have nothing to do with the books. The book-keeper has charge of that. That was in 1939.

Mr. Thompson: We object to the testimony and move to strike it out on the ground it has no connection with the Defendant Johnson. It does not tend to prove any of the issues in this case.

The Court: Denied.

SAM GREENBERG, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Sam Greenberg. I live at 307 South Bell Avenue, Chicago.

330 In 1938 I was employed at the Southland Club. I was out of work and I passed by the Morrison Hotel and the cab driver told me to see Mr. Johnson and I asked him for work. I seen Mr. Johnson. I just asked him how about going to work (indicating defendant Johnson). He told me to meet him at 63rd and Cottage Grove, the Southland Club. I met him I should judge about between ten and ten thirty in the evening.

I was introduced to Mr. Creighton by Mr. Johnson. Mr. Johnson did not say anything to Creighton. He just introduced me. Then I was talking to Mr. Creighton and he put me to work as a shill. I worked there until they closed up.

I worked at the Club Western until the 19th of September. I don't recall when I started work there. I worked at the Southland until the last nine days of 1938. I started there. I worked at the Club Western the early part of spring until September 1939. I was a shill at the Club

Western. I received five dollars a day, at both the Southland and the Club Western. It was paid in the evening in the form of cash. I worked from eight in the evening until three in the morning at the Southland and the same hours at the Club Western.

I see the man Creighton here that I met out at the Southland (indicating the defendant Creighton).

I don't know whether there ~~was~~ was any transportation furnished between 63rd and Cottage Grove at the Southland and 9730 Western Avenue.

Cross-Examination by Mr. Thompson.

I worked at the Morrison Hotel for a good many years as a cab starter at the door for the Checker Cab Company. I knew Bill Johnson for a long time. Occasionally he used to come around the Morrison Hotel and I would see him around there when I was at the door starting cabs. I used to say Hello to him.

I got out of a job and I saw Mr. Johnson and I asked him if he knew where I could get some work. He told me to meet him out at 63rd and Cottage. He would talk to 331 Mr. Creighton and see if he could put me on. I went out there and met him and he introduced me to Mr. Creighton and told Mr. Creighton he would like to have him give me a job, and then I got a job and went to work there for Mr. Creighton. Mr. Creighton paid me. I went to work for Mr. Creighton until his place closed up at 63rd and Cottage.

Then I went to the Club Western and I worked there for Mr. Creighton until they closed that place up. Mr. Johnson never paid me anything. He did not discharge me from this job. He did not hire me. I was shilling for craps. That was the work I was doing all the time for Mr. Creighton.

CHARLES G. SCHULTZ, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Charles G. Schultz. I am a carpenter. I live at 6447 North Drake. My house is across the street with relation to the Dev-Lin. I had occasion to do some work at the Dev-Lin in the spring of 1935. I am familiar with the

inside of that establishment prior to the time that I worked there. It was a dance floor. There was a stage with decorations on the inside.

Q. Now, will you state the circumstances under which you went to work at that place in the spring of 1935?

Mr. Thompson: I object to that as too remote and as immaterial to any issue in this case.

The Court: Overruled.

The Witness: I was not working in the spring of 1935, so I saw they were doing some work in the yard there, and I went over and looked around and I saw and got acquainted with Roy Love. He asked me if I wanted to go to work and I said Yes. I worked at the place about six months.

Q. Can you state what was done to the establishment while you were working there? What was done to it?

332 Mr. Thompson: That is immaterial and no tendency to prove income of the defendant Johnson.

The Court: Overruled.

The Witness: We took down old fences and old concession stands and cleared the place outside of the building. I did not work inside the building. I saw gambling in the inside. I can't remember when I first saw gambling. I had been working there three or four weeks when I saw gambling.

Jack Sommers gave the orders as to what we were to do there. No one else. I saw the defendant, Ed Wait, around the premises while I was there. The only conversation I had with Mr. Wait was about a dog that killed some chickens. He came over and apologized to me and told me that he was Mr. Wait.

There was a boiler installed on the premises. I had one conversation with the defendant Wait when it was finished. He said it was too small.

Q. Now, you stated that Jack Sommers gave you orders. Can you tell what some of the orders were he gave you?

Mr. Thompson: I object to that as immaterial. All this detail has nothing to do with the issue of the case at bar.

The Court: Overruled.

The Witness: He showed us what to tear down, what to clear away and also told me to move a small building away from the front. Three of us worked putting up a fence around the premises. That was during the period of time I was talking about in the spring of '35. The gambling house was open and running at the time I put that fence up.

I saw William R. Johnson out around the premises there. I saw him walk around there one evening with Jack Sommers. They were looking at the building.

I put on some new varnished boards, painted them, and also painted the fence. Jack Sommers told me to do that paint work.

I saw the defendant Hartigan at the Dev-Lin at the 333 time I was testifying about. Some times I saw him outside and some times inside.

I stayed employed at the Dev-Lin when I was first working there about six months. It was the fall of 1935. When I finished my labor outside I did not do anything else there.

I did take care of the boiler. Jack Sommers told me to do that.

Q. What were your duties about taking care of the boiler, what were you supposed to do?

Mr. Thompson: Object to all this as immaterial. We are not trying a building case.

The Court: Overruled.

The Witness: I had to see that the fire kept going and keep the ashes out. I did not do anything else besides take care of the boiler. I did not shill at that time between the spring of '35 until November '35.

I stopped working at the Dev-Lin in November of 1935. The place was closed. They moved out.

I was out of work after the place closed for about a month or six weeks. Then I was called one evening to go to work at the House of Niles on Milwaukee Avenue. It had been a tavern. There was a bar there. There was no gambling equipment of any nature, just an ordinary roadhouse tavern. I went there that night and worked on a counter, tore it apart. I also worked on some doors and a platform outside about three days. There were three other men working there.

Roy Love was in charge of that place. He was there all the time. I saw the defendant Reggie Mackay while I was working there. He just talked to Roy Love. I did not put any equipment in.

I worked there three days and then Roy and the men that were there were taken to the Lincoln Tavern, three of us including myself. The Lincoln Tavern was like a tavern inside with a dance platform in the center. There was no
334 gambling equipment there, just another roadhouse.

When we got to the Lincoln Tavern we tore down a partition and tore out the dance platform and we put up a

partition for a bar room. We did not tear out anything else.

Mr. Thompson: We object to repeating all this immaterial testimony, wasting time.

The Court: Overruled.

The Witness: We also put in double doors at that time. There was a door put in leading to the big room through the vestibule and another door. We worked on this, actual labor fixing this place, about four weeks.

I saw Mr. Johnson, Mr. Wait and Mr. McGrath while I was in the course of work of repairing this place. They were in the room. It was littered with lumber and tools. They were looking around and talking to one another. Roy Love was with us. There was a conversation between them. They stayed perhaps an hour.

I have also seen Barney McGrath at the Dev-Lin. I don't know what he was doing there. I seen him come and go. After we had finished working on these premises at the Lincoln Tavern we went to Division and Dearborn. Before I went to Division and Dearborn I stayed at the premises taking care of the boiler. Roy Love told me to take care of the boiler. This was in the night time. It was for about two weeks. I did not take care of it in the daytime. I worked there in the daytime.

When I worked during the daytime Jack Sommers gave me orders. Roy Love gave me orders in the night time. No one else.

After this place had opened up Roy Love was working in the kitchen. He supervised in the kitchen. There was gambling going on when I saw him doing that. Food was being served. I saw the defendant Hartigan out there while I was working. He was talking to people. He did not give any orders. I always saw him there at night for 335 the two weeks that I was taking care of the boiler.

Sometimes my pay was sent down to me by one of the colored boys and sometimes Mr. Hartigan handed it to me himself. I got it from the cashier when I worked days. His name is Pete Riley. I have seen him at the Harlem Stables. He was cashier at the Harlem Stables when I saw him.

I saw Bill Kelly at the Lincoln Tavern. When I first saw him he was a box man.

I know the defendant John Flanagan. He was not out there.

I saw the defendant Johnson out there. I can't say the

exact number of times. I saw him on and off there for the two weeks that I worked nights. I saw Ed Wait out there. He was either talking to somebody or sometimes I saw him sitting on chairs. He did not hold any official job out there.

I left the Lincoln Tavern to go to the D. and D. on Division and Dearborn. Roy Love told me to do that. I went alone to the D. and D. I was sent down into the basement to tear out some old shelves. Roy Love sent me into the basement. There was no gambling equipment there. I tore out the shelves. We panelled part of the sides and built a partition across the back and some counters. That is all. One other person was working with me in the basement. This was in February of 1936 I think.

After we finished the basement we went to the second floor. It was a lodge hall with seats built all around the sides and the front end was partitioned off. There was a tank in there and something like mortar boxes. We tore out those partitions that were in the front, we tore out the tank and an old organ that was in there. Then we started to patch the floor. We laid new flooring. We changed some of the doors, and put openings in the walls. We made an opening on the south wall possibly six or seven feet. We put up two thirty-six inch blow fans in the rear of the place. The kind you have in a window to blow air out.

We remodeled the toilets.

336 Mr. Thompson: We object to all of this horrifying detail of revamping a building; immaterial to any issue in this case.

The Court: Overruled.

The Witness: I worked there until the fall, possibly four or five months. There was sometimes more or less than six men working with me.

Q. How much were you getting?

Mr. Thompson: We object to that as immaterial.

The Witness: Ray Love paid me,—\$5.00 I think.

The Court: Overruled.

The Witness: We next went to the Harlem Stables located on Harlem Avenue. The room that we worked in had been used as a tavern. There was no gambling equipment in there. It was not fixed up in any way for gambling. We went out there some time in the summer of 1936. Roy Love told me to go out there. I worked there under him. We put on a lean-to about seventy-five feet long, we laid a floor, and panelled the inside.

Q. What kind of panelling did you do on the inside?

Mr. Thompson: What has that got to do with it. We object as immaterial, whether it was plaster board or knotty pine.

Mr. Plunkett: If the Court please, these are capital expenditures I am bringing out here. I can't prove the exact amount, but we have a right to show—

The Court: Go ahead.

(Overruled.)

The Witness: Quarter inch panelling.

That is all that was done by myself and the others. I saw the place at night after it was finished. It looked like gambling and horse book equipment there.

I worked at the Harlem Stables under Roy Love about six weeks or two months.

We next worked out on Johnson's farm. Roy Love took us out there. We panelled the cow stables and hog house.

Q. What kind of panelling did you do in those?

337 Mr. Thompson: We object as immaterial.

The Witness: Quarter inch panelling.

The Court: Overruled.

The Witness: I worked at the Johnson Farm about three times. We built six brooder houses and on another occasion we put up chicken houses. We also shingled roofs on the horse stables and other stables. On all these occasions Roy Love was in charge. He paid me.

I saw Mr. Johnson, Mr. Hartigan and Reggie Mackay out there and Barney McGrath. That's all. I saw Jack Sommers out there and I saw the defendant Kelly there on different occasions. I built one house out at the Johnson Farm. It was a frame bungalow. I did all this work on the Johnson Farm in '37.

We next went back to the Harlem Stables. We panelled the other room. After the Harlem Stables we went to Flanagan's, 2200 something 22nd Place. Flanagan was there. Roy Love and Flanagan were there when I got there. No one else that I knew. We panelled the whole inside.

After we had finished that work we worked at School and Milwaukee Avenue. At the same time we were working at Flanagan's at night. Before we finished at Flanagan's we went to the building at School and Milwaukee Avenue and built some counters there. We saw Charlie Smetana at that building at School and Milwaukee Avenue. I had got acquainted with him from the Dev-Lin Inn the previous year when I worked there. Charlie Smetana was talking to

Roy Love when I was at School and Milwaukee. I was there about a week. We built some counters. They were different lengths, some twelve and some were fourteen, with a flat top. There was nothing in there. We did no work on the walls.

After we left School and Milwaukee and Flanagan's place we went to Clark and Howard. I don't know the number of the place. Roy Love told us to go up there. It had been a garage. The first time I came there I laid a floor.
338 There were about three or four carpenters working on the floor and I worked for about three or four hours and went home. I came back after the floor was finished. We built some toilets.

When I left 7515 Clark Street I went to the farm again. We built the chicken house. When we finished that we went to the Bon-Air Country Club. The first time I worked there was about three months. We put a building on to the one that was there, about 60 by 100. Roy Love was giving me orders at the Bon-Air and he paid me. Second time I worked at the Bon-Air was in 1939. I did carpenter work there, building forms for cement foundations, set joists and laid floors.

When I left the Bon-Air in June I didn't go back to work until about six weeks later when I shilled at Dev-Lin. I was working for Jack Sommers at the Dev-Lin. I saw Barney McGrath once or twice when I was shilling at the Dev-Lin. He just came there the last day.

Government's Exhibit O-19 for identification is a picture of the Dev-Lin, the place I have been testifying about. O-19-A for identification is the front of the Dev-Lin, the same place I have been testifying about.

Government's Exhibit O-2 for identification is the front of the D. and D. that I have been testifying about.

Government's Exhibit O-3 is the Harlem Stables that I have been testifying about.

Government's Exhibit O-4 for identification is the side of the Harlem Stables that I have been testifying about.

I was acquainted with the place known as the Casino. I done three nights work there for Roy Love. We opened up an entrance on the Milwaukee Avenue side.

Government's Exhibit O-6 for identification is the Casino on Irving Park Boulevard. That is the place where I worked.

Government's Exhibit O-7 is the Milwaukee Avenue side of the same Casino.

Government's Exhibit O-17 for identification is 339 Flanagan's place that I have been talking about.

Government's Exhibit O-18 for identification is the entrance to the Lincoln Tavern. That is the building I was working on.

Government's Exhibit O-18-A that is the Lincoln Tavern, the same building that I was working on.

I have done work at the Horse-Shoe. We took varnish off the woodwork. I was working under orders from Jack Sommers for about two weeks. I don't really remember the year. I saw Roy Love at the Horse-Shoe at the time I was there. He was giving me orders then. I never worked on the south side.

Government's Exhibit O-5 for identification is the place at Kedzie and Lawrence that I have been testifying about.

Mr. Plunkett: The Government will offer the exhibits that have just been shown the witness.

Mr. Callaghan: We object to those documents, if the Court please, as unnecessary and encumbering the record and entirely immaterial to the matter in issue here, some 19 pictures.

The Court: It is overruled.

Mr. Callaghan: We move to strike, if Your Honor please, all the testimony of this witness as being immaterial, and more particularly the testimony having to do with the year 1935 as being outside of the scope of this indictment or any charge in the bill of particulars.

The Court: Denied.

Cross-Examination by Mr. Hess.

My services to which I have testified commenced in 1935. I was a laborer. I was in business for myself before that time. When I began to work at the Dev-Lin in 1935 I was in the ice business. I was out of work about two years. I did not know Roy Love during this period. I did not know Jack Sommers. I first saw Roy Love after they opened up the Dev-Lin. It was in the early spring of '35 when I did the work for Roy Love at that place. I worked there 340 six months. I didn't ask Roy Love for a job. I gave him to understand that I was out of work. He asked me to come to work for him. During the two years I was out of work I had a little ice business left and I had worked planting trees in the Village of Lincolnwood.

I am a married man with a family, living at this Drake

Avenue address across the street from the Dev-Lin. I talked to Roy two or three times before he asked me to come to work for him. It was in that two or three times that I cultivated his acquaintance that resulted in my getting a job. I do not know the name of his company that he was operating under. When I worked for Roy I did not learn to know the name of the contracting company that was doing that business. All I know is that Roy Love was doing the work, he hired and paid me and the type of work I did was carpenter work. I had done other carpenter work. The work ended at the Dev-Lin and I continued work for Mr. Love.

I have heard of the Lightning Construction Company. I first heard of them when we worked at the Harlem Stables. That was later on.

When I left the Dev-Lin I went to work at the House of Niles in the fall of 1936. I did work for Mr. Love at a place other than the Dev-Lin in 1935. I worked at the House of Niles three days. That was in the fall, the last part of November or the first part of December. There were three of us, Kay and his son. I saw Mackay there. I did not tell that when the District Attorney asked whom I saw at the House of Niles.

I saw Mr. Kay there, of course. I was working with him. I saw his son. I did not see anybody else there whom I did not name when the District Attorney asked me, outside of Roy Love. I saw him there and on one night I saw Reggie Mackay; that is at the House of Niles. The House was not in operation when I was there, just an empty room. I did not see any other person coming and going other than I named in my direct examination. After we got 341 through at the House of Niles that did not end my services with Mr. Love. We went to the Lincoln Tavern. That was in 1935. It was after we were to the House of Niles. It was still in 1935, when we went to the Lincoln Tavern. It was before Christmas, possibly about six weeks. That took me into February 1936.

I did carpenter work and I worked a couple of weeks taking care of the boiler. I couldn't tell the exact date when operations began at the Lincoln Tavern. I was working for Jack Sommers there. Roy Love told me to go to the Lincoln Tavern. He was on the job while we were building. He gave me orders. The kind of work I did for Sommers was in the operation of the place. I was taking care of the

boiler for two weeks at night and when I did construction work at the Lincoln Tavern I did carpenter work.

It was a roadhouse on Dempster Street in Morton Grove when I first saw it. There was some carpenters started with us when we started there. We got a bunch of carpenters from Morton Grove. They were working with us. There were four or five in the bunch. I don't know their names.

I have not told you about the maintenance man that was working there at the place. His first name was Steve. I have told you all now.

I did carpenter work at the Lincoln Tavern and repaired the bank on the outside and put some plank around the bushes. I patched up windows, painted the front. All told, I worked about six weeks and I started with carpenter work, and I finished taking care of the boiler for two weeks.

I was working for Roy Love all the time.

342 The Dev-Lin was a picnic grove owned by Mr. Engler.

Before I commenced work there there was just one frame building in the center. I did only carpenter work at the Dev-Lin. I worked there six months. I always worked for Roy Love.

Hartigan gave me no orders at the Lincoln Tavern. I saw him there every night while I was taking care of the boiler. The place was in operation when I was handling the boiler. I saw a lot of people. I didn't know them.

I was paid every night when I was working on the boiler. The colored boy brought my envelope down to the boiler room once or twice. I don't remember going upstairs to get my envelope the other times but I do remember Mr. Hartigan calling me to the top of the stairs and he handed me my envelope.

I saw Pete Riley there as cashier when it was open another time. I saw tables in operation in the play room. I was in the gambling rooms three or four times during the two weeks I was handling the boiler and I saw Pete Riley in the day time when I was doing carpenter work in the Dev-Lin.

343 I did not see Mr. Riley in the gambling room at the Lincoln Tavern. During the time that I ran the boiler at night I cannot name any other persons that I saw in that room that I have not told you about.

At the end of the two weeks on the boiler I left for the D. and D. I was told by Roy Love to go to Division and

Dearborn for carpenter work. I went there alone and he increased the crew to Kay and his son.

Mr. Love hired me and paid me. That job at the D. and D. lasted from February until July. That was immediately after I left the Lincoln Tavern. I was not out of employment between the two jobs. I worked every day at the D. and D. Roy Love paid me once a week.

When the job was through Roy Love took us to the Harlem Stables. That would be in July 1936. I worked at the Harlem Stables about two months. The crew was myself, Kay and his son. There were three carpenters from Morton Grove working there. I don't know their names. I saw Mr. Weil there. He was not working in our crew. The place was not in operation when we were working. It was not when we left. The Harlem Stables had been an onion warehouse. There was a bar and dance floor and tables and chairs in there. We panelled the sides and laid a wood floor over the cement floor.

Mr. Love paid me for the work at the Harlem Stables. After that I went to work on the farm. Roy Love told me I was going to the farm. He paid me for working. I rode out in Roy Love's car until we got through with that particular job. It took about possibly six weeks. We panelled the hog house and the cow stable at the farm.

I think it was in '37 that I went to Clark and Howard. I didn't keep records of where I worked but all this work was being done during the time I worked with Mr. Love. I didn't hear about the Lightning Construction Company until the first time we were working at the Bon-Air.

We worked at the Harlem Stables twice. I don't remember how long we were away from the Harlem Stables before we came back. I don't remember whether it was the same time of the year that I worked there the
344 second time. We panelled the other rooms the second time. There were two rooms of the same size. The same crew did some more panelling for Mr. Love and he paid me. I do not remember the year that I went to School Street. It was after the second trip to the Harlem Stables.

I worked for Mr. Love in the Fall of '36. I don't remember if it was up to the holidays of '36. I worked rather steadily during the whole year of 1936 there at construction work. That was true of 1937 with some exceptions. I do not know when was the last time I worked for Mr. Love in '37. I worked for him in '38 and in '39. It was at the Bon-Air in '38. This was construction work. Mr. Love

asked me to go there. He paid me. That is true in 1939. I do not remember rendering any other services as carpenter or painter or craftsman for any other person than Roy Love during the years '36, '37, '38, '39. The only man I worked for in that line of work was Mr. Love. I did not work in any other place for Mr. Love than those three I have now told you. These are the only ones.

The last time I told anyone connected with the Government the facts as I have related them on my direct examination was the 27th of August. That was not the first time I talked to anyone. I don't remember the date.

It was this summer I saw that gentleman over there (indicating Mr. Stains) in his office in this building. I answered the questions he asked me. The questions were written down. He was writing the answers. I saw these questions and answers the same day. I was questioned again by Mr. Plunkett. That was before I took the witness stand. I have seen this written statement of questions and answers. It was written with pen and ink. I read it. The questions were printed on there. The answers were in pen and ink. I signed it. After that I did not see that statement. I did not see it before I took the witness stand. No

one told me what was in it. I was subpoenaed to see
345 Mr. Stains. It was like a postal card. I don't know if that subpoenaed me to come before the grand jury. I got a letter to come down. When I got down in answer to the letter I was given a subpoena to come to this trial. I did not testify before the grand jury. I was interviewed once or twice by government officials respecting my testimony in this case. My conversation with Mr. Plunkett was within the last day or so. He did not show me my statement. He did not tell me what was in it. He asked me questions. They were the same questions Mr. Stains asked. He was not reading from anything. He was asking these questions right out of his mind. They were the same questions Mr. Stains asked.

I saw Mr. Sommers at the Horse-Shoe. I was told to go there by Roy Love. There was a crew there. I was paid by Mr. Love. Mr. Love gave me the order. Mr. Sommers did not give us any orders as to how to do our work on that occasion.

The D. and D. Club is located within the premises on the picture Exhibit O-2, a little lodge hall on the second floor. These other places are stores and other businesses and flats.

I also identified Exhibit O-6. I did no work on the second floor. I did not do any work where it says "Public Service Optical Company".

3971 is the entrance to the Casino. I did not do any work at 1940, where it has "Car License—One Day Service". There is a large room inside.

I also identified Exhibit O-7. This is the Milwaukee Avenue side of the Casino. I don't remember the number on Milwaukee Avenue. I did not do work in that whole building that is in this picture, just this entrance here that is marked. I did no work where it says "Checks Cashed, Money Orders". I did no work where it says "Budget Planning". None of these cars here belong to me.

I did work on the second floor of these premises, Exhibit O-3.

346 I identified Exhibit O-5 as the premises known to us as Kedzie and Lawrence. I did some work in that building on the second floor. I am pointing to four windows from the left. That is all on the second floor. I did some work in the restaurant on the first floor. I had nothing to do with this Rose Bowl and Cleaners and all this other part of the first floor. The place where I took the varnish off on the second floor was just a hall. There was a stairway that led upstairs off the door of the restaurant.

Redirect Examination by Mr. Plunkett.

We panelled the restaurant, indicating the store here with the Venetian blinds.

Q. You were asked this morning when you first heard of the Lightning Construction Company. Do you recall that?

A. I recall it at the Bon-Air. I thought it was a joke. Mr. Hess: Move to strike, he thought it was a joke. The Court: It may stand.

The Witness: I had occasion to visit the D. and D. premises after it was finished. I was sent with a painter to wash the walls. There was furniture in there. I saw steel leather chairs and crap tables and roulette wheels. The roulette wheels were in separate rooms. There was a lounge on the second floor. I saw steel upholstery, leather chairs, a couch and a concession counter. There were carpets on the floor. There was a wardrobe and

there was a room a way back. They used it as a wardrobe and stockroom, and scrub pails and mops. I don't recall that there were any curtains on the windows. I should judge that the entire second floor was about 100 by 50. I named certain individuals in my testimony this morning. I can point them out. (Indicating the defendants Hartigan, Flanagan, Wait, Kelly, Mackay, Sommers and Johnson.)

JAMES BONFIELD, called as a witness on behalf
347 of the Government, having been first duly sworn,
was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is James Bonfield. I live at 2128 South Ridgeway. I worked at 3948 School Street. I was a board man. A board man is a man that carries the boards from one end of the room to the other and puts the line on it. The line that lines the approximate odds of a horse. Bring them from one end of the room to the other and bring them in front of the stand where they are put on the side while the horses are running.

I couldn't say exactly what year it was I went to 3948 School Street, but for the man that I was working for, I had been there for several years, and we moved from one spot to another into this 3948.

My boss was Thomas Hartigan. We moved from 3332 Milwaukee Avenue. We were at 3332 Milwaukee Avenue about two or possibly three years. That place was known as the Crawford Club. From that address we went to 3948 School Street. The name at that address was the Crawford Club. I imagine we were at School Street possibly two or three years. I did the same type of work in both places. We had not moved to any other place after we were at 3948 School Street.

I worked at Harlem Stables approximately six or eight weeks after 3948 School Street. That was about 1938. I was parking cars in the backyard. My boss, Thomas Hartigan, told us to go out there. There was quite a few of the lads that worked with me that went out there. When I went to the Harlem Stables I was spotting cars. I seen the lads that worked with me. Our doorman told

me to go back in the backyard and park the cars back there.

I know a man named Charles Smetana. I used to work for him at the Crawford Club. He was the owner of the place, or the boss. I seen him at 3244 North Crawford. I worked there underneath Charles Smetana. I did not see any of these men that I see around the tables here at any of these places I worked, Crawford Club or 348 Harlem Stables.

Mr. Thompson: Move to strike the testimony of the witness; in no way connected with any of these defendants; immaterial to any issue in this case.

Mr. Hurley: All the places about which this man has testified have been shown here by evidence already in the record.

The Court: Motion denied.

DANIEL HOWARD CUSACK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Daniel Howard Cusack. I live at 6301 West 32nd Street, Berwyn. I worked at a place known as the Crawford Club at 3948 School Street off and on for four or five years. I was cashier and sheet writer. The last time I was writing sheets I took the wagers as they came in. I would write it down on a sheet and hand the man a ticket and take his money. There was a duplicate copy. After I had written that on a sheet and taken the money I would eventually turn the sheet and the money over to the man in charge. I worked as a cashier on School Street and Milwaukee Avenue. I paid out the winning wagers. Anything that was to be paid out I paid out. There was an "out" column and I put the amount on the out column, the amount of the wager. I would make an entry on the out column as soon as the party came up to collect the ticket. I put down the amount of money I paid out. I would place the amount of the wager and the out on the sheet. I did not keep any record of what was taken in.

There were four cashiers working there at the time I

described. There was one man considered the head cashier. I did not at any time act as the head cashier.

While I was acting as cashier I would get certain 349 sheets that you would have made when you were sheet writer, from the sheet writer. The sheet was brought over to me with the amount on the sheet and I totaled it up and put the amount on top of the sheet. At the end of the day we would balance up and total these sheets that I received from the sheet writer and turn them over to the head man. We had a clip on them, we kept them together.

I worked at School Street until October '39. I did not work there previously. I only had five or six months there.

Tom Hartigan was my superior when I was working at the Crawford Club.

I know William R. Johnson. I see him in the court room (indicating the defendant William R. Johnson). I did not ever talk to Johnson at any time when I was working at the Crawford Club. I talked with him before, I imagine '34, '35. That conversation took place at 4020 Ogden Avenue. I imagine it was a gambling institution. I asked him if he could use me as a sheet writer or cashier and he told me to see him later. I did several times, at the same place. I lived in the neighborhood at the time.

After the first time I saw him, and I saw him again, I did have a talk with him. He told me there was nothing open at present but as soon as something presented itself he would send me over there. I did not see him after that. I did not have any talks with him after that. I was out of work when I went to see Johnson at 4020 Ogden Avenue.

I saw him at the Crawford Club on one occasion. He just strolled in the same as anybody else and strolled out again. I did not see him talk to anybody. I did not work at any other place after I worked at the Crawford Club. I did work at the Stables, indirectly. I have a car and I took customers from the Crawford Club to the Stables. I believe it was some time in July '39 when I started doing that. Mr. Tom Hartigan appointed me to that job. I didn't have a talk with him about working.

After the Crawford place was closed he asked me if I 350 had a car and I said Yes; so he said. "Well, you know our customers, so you can drive them out there from the Crawford Club." I would stay parked at the corner

until the starter would send me away. Then I would take the customers to the Stables. My hours were from eleven thirty in the morning until seven that night. I was paid seven dollars a day for that.

Mr. Thompson: I move to strike the testimony of the witness; immaterial; tending in no way to prove taxable income of the defendant Johnson, or any attempt to evade taxable income.

The Court: Denied.

CLARENCE BELLAMY, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Clarence Bellamy. I live at Cedar Lake, Indiana.

I was employed in a gambling house in Chicago last summer and spring up until September of '39. I started the first of the same year. I just walked up to the Club Southland and asked for a job. I talked to a fellow by the name of Johnnie.

I have seen the defendant Andrew J. Creighton several times. I don't know offhand how many. I never had a talk with him more than to say Hello.

I did not see Creighton to get my employment. I didn't see him to get the job. I talked to him after that to say Hello. The fellow by the name of Johnnie told me to go to work. He was working there, too. I don't know just what he was. He was upstairs.

I was driving there from 63rd to 97th. I drove from the D. and D. Club at Division and Dearborn to the Harlem Stables at Irving and Harlem. I had a note 351 in my pay check to go over to the D. and D. Club and get a job, report there the next night. I went there the next night and went to work. I just handed my note to the fellow who stoppped me there. I didn't go upstairs at all. I drove approximately three months between Division and Dearborn Club and the Harlem Stables.

I got my pay at the Stables at the time I drove between Division and Dearborn and the Harlem Stables.

After I had finished my work driving between Division

and Dearborn and Harlem Stables, I worked at the Club Southland again. I was told to go there the same as I was before, just a note in my pay envelope telling me to go back there again.

I have seen Mr. Kelly before and said Hello to him. He bawled me out once for being late.

Cross-Examination by Mr. Thompson.

I have my own car. I first got my job at the Southland Club in January 1939. My job was as a driver. The Southland Club was then operating. They had been for about a month or so at that time. The first time I worked upstairs, just shilled at the card table and crap table. I worked as a shill over a month. I worked at that time about every night. I didn't work so steady at the time there. I had a broken hand, the right one. I had to throw the dice with my left hand. The same people did not play night after night at the crap table, different customers. One or two repeat customers that I know of. I did not mean that I knew them personally. I mean that I have seen the person more than once, maybe twice. I recognized persons' faces. I didn't introduce myself around the crap table. When anybody wanted to shoot craps they just walked up to the table and put down their money and shoot.

After I worked at the crap tables I went back to driving. I had done driving before that. I worked at the Harlem Stables before that. I worked at the Harlem Stables before I worked at the Southland. Driving from

Dearborn and Division to the Harlem Stables. That 352 is the first job I had. That was in the beginning of

'39. I did not drive between Dearborn and Division and the Harlem Stables at the beginning of '39 and also shoot craps at the Southland Club at the same time. I worked at the Southland Club, then went to the Stables, then back to the Southland.

The first time I ever worked at the Southland was in '38 or '37. That was the first time. That was only about two weeks at the most. That was in about the last part of '37. I was driving from 63rd and Cottage Grove to 119th and Vincennes. There was a little club down there. That one operated when the 63rd and Cottage Grove was closed up. When the 63rd and Cottage Grove

closed I stationed myself there at that club and took the customers that wanted to play down to 119th and Vincennes Club. I believe that was in 1937. I don't know the date. Approximately around December. I didn't work over two weeks at that employment. That was my first employment in connection with one of these gambling clubs. I had been a roofer after that.

I had another job at one of these clubs the first of 1939. That was driving. I went back to the Southland in January 1939. The first job I got was shilling. I worked at that job about a month. Then I was driving from the D. and D. to Harlem. I don't know that either one—whether both closed or not, but I was just going out to the Stables. I don't know if the D. and D. was open or closed. All I know is I would pull up to the D. and D. during that period and drive out to Harlem. Then I turned around and went back and stationed myself at the D. and D. and waited to see what happened. I did not get passengers every night.

I worked at that job about three months. We are talking about 1939.

The next job was driving at the Southland between 63rd and Cottage Grove and 9730 Western. I was driving from the Southland at 63rd and Cottage Grove to the 353 Western Club at 97th and Western. I believe it is slightly out in the country. The Southland was closed. Then I took customers that reported there out to the Western Club. That operation lasted until September. Then they all closed and I have not worked at a gambling establishment since.

I have been doing roofing since last September. I work for a number of firms. I am working now for Kedmont.

I have talked to some of the agents in the building. This matter was first discussed with me about April 1940. I just had a short talk. I don't know their names offhand. I do see some of them around here, this fellow here (indicating).

I was called in. They served a warrant on me. I don't know who served it. That was the first thing I heard of this whole business, when they served a warrant on me. I understand it to be a subpoena to come down here and talk to somebody. They did not bring me down. They told me to come down here. They gave a certain date to be down here by. I came on the date I was told to. It

was a letter signed, I believe, by Mr. Campbell, United States attorney. I reported to Room 450. I saw this gentleman there. I couldn't tell offhand at first which one it was. I talked to them. Two of them were present.

After I talked a while they told me to come back again, they would send me a letter. They took a written statement from me at that time. They had a list of questions to ask me and I gave the answers and then these answers were written down as I gave them.

When I received the next letter I was told to come down. I believe that was about a month ago. I believe it was about the first of August. I came into the office. A couple of different men talked to me. They took a written statement again. They checked the previous record. They had the old statement in front of them and asked me questions.

I believe they were checking my new answers with 354 the old ones. I came down again August 31st. I was to be down here on the 27th and they changed it to the 31st. I didn't talk to anybody on the 31st, just sat around that day. They told me they would send me a letter when I should come back again. I didn't talk to anybody on that day. They kept me waiting two or three hours.

Then I got another letter. That was to come down the fourth of September. I didn't talk to anybody, just sat around. They told me to come back the next day. I didn't stay here all day. I was here for approximately three hours.

Then I came back the 5th. I did not talk to anybody other than to just report that I was here. I have not talked to anybody since then, just to report that I was here. That is all the conversation I had prior to going on the witness stand. I have testified here to all that was discussed with me during those interviews.

CLARENCE CARGETT, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Clarence Cargett. I live at 3211 Altgeld Street. I am acquainted with an establishment known as the Mayfair Club that is located at Elston and Lawrence. I think the exact street address is 4873 Elston. I

was employed there March 1939. Mr. Antone Moody employed me. I was a board man. The duties of a board man are to mark up odds, put on the jockeys and the scratches. This was a race horse book that I was employed in.

There was a time after I was employed there that the place didn't open. We drove customers from the Mayfair Club out to the Stables. I did that on the orders of Mr. Moody. I don't quite remember the time. I think some time in May or June. I drove customers from the 355 Mayfair Club to the Stables about three or four weeks. I don't know where Mr. Moody was at the time. After three or four weeks of driving I was told by the yard man to go back to the Mayfair Club the next morning. I went back. It was open. I went back to work as a board man. I worked there until last September when they closed again.

ADOLPH BINGEN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Adolph Bingen. I live at 64 West Schiller. I worked at the Lincoln Tavern in the spring of '36. I met a benleman by the name of Boone Kelly in Miami, Florida. He asked me whether I was working. I told him No. He says, "I will give you a card to Mr. Hartigan, for you to go out to the Lincoln Tavern and ask for a job". I went out to the Lincoln Tavern in the spring of '36. I saw that Hartigan here in the court room that I saw at Lincoln Tavern (indicating defendant Hartigan). When I was at the Lincoln Tavern I saw Hartigan, I talked to him at that time. I asked for a job. I told him Boone Kelly sent me to him and asked if he had a job for me. He asked me, "Do you know anything about this line of business?" I says, "Yes". "Well," he says, "You can go to work at eight o'clock, tonight. I was shilling that night. I worked on roulette, dice and black jack.

I worked at the Lincoln Tavern until the fall of '36. From there I went to Tessville. We called it Tessville. There is another name, Dev-Lin. I did the same thing at the Dev-Lin, shilling at all the games there. I came to the Lincoln Tavern. It was closed. I heard they were open

at Tessville and I went over there. I saw Mr. Barney
356 McGrath there. No one else was there at the time
besides Barney McGrath. I didn't work there very
long, about three months, I guess. All of that time as a
shill. I didn't see anybody else there that I knew in
particular besides Barney McGrath.

After working for about three months at the Dev-Lin
I worked at the Horse-Shoe at Kedzie and Lawrence. It
was a gambling place on the second floor, a little lunch-
room right below.

I came out to the Dev-Lin. It was closed, so I went to
the Horse-Shoe. I went to see Jack Sommers at the Horse-
Shoe. I see that man here in the court room. I talked to
him about a job. I told him I knew the game they worked
there. I asked him for a job. He did not say anything
to me in particular when I told him I knew the game. I
had not know Sommers before that. I went to work
after I talked to him, the same kind of work, shilling at
the games I have enumerated. I didn't work there very
long.

I went from there to the D. and D. whenever they
opened up. I have forgotten when that was.

I worked at the Horse-Shoe about a month and when
I left the Horse-Shoe I went to work at the D. and D. I
heard that the D. and D. was going to open up. I went
down there. I heard the boys I was working with say,
"The big place is going to open up."

I went to see Mr. Kelly. I see him here in the court. I
talked to him when I went over there. I asked him for a
job. He said, "Yes, I need some boys. You can go to
work tonight". I was getting \$4.00 a night when I was
working as a shill. I was paid every night in cash.

I worked at the D. and D. about seven months. The
D. and D. closed for a while, and from there I went back
to the Horse-Shoe. I came to work one night at the D.
and D. The place was closed. One of the boys had a
machine. He said, "Come on. We will go out to the
357 Horse-Shoe. I think they are open." I went with
them to the Horse-Shoe and I went to work there.
I talked to Mr. Sommers. I asked him for a job. He
put me to work as a shill. I forget just how long I was
there the second time.

I was sent from there out to the Harlem Club. One of
the boys, a runner on the floor, said, "You go to the Har-
lem Club. They want some men out there tomorrow".

He said, "I got too many men here". That was in the evening when I went to work at the Horse-Shoe.

I was sent over to the Harlem Club, that is, the Harlem Stables. I saw Mr. Pete Riley over there. I asked him for a job, if he needed a man. They told me to go over there and look for a job. I talked to Riley. After I talked to him he put me to work, the same type of work. I worked nights at that time.

I did not see anybody else there besides Pete Riley. I did not see any of the men that I had seen at these other places I had worked for.

I do not know William R. Johnson. I have not seen him that I know of. I seen a picture in the newspaper.

THOMAS CANFIELD, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Thomas Canfield. I live at 3439 West 21st Street. I have lived there since 1933.

In 1934 I went to work for Mr. Flanagan, the 4020 Club, 4020 Ogden Avenue. I worked there about three or four months as a shill. In '36 I went back and asked Flanagan for a job. He put me to work.

After I left Flanagan in '34 I worked for myself, in 358 '35. They were digging a water tunnel. I was getting rid of the dirt.

In 1936 I went back to Flanagan again as a shill at 4020 Ogden Avenue. I worked as a shill about three months, then Flanagan sent me to the office—I don't know the address, on Crawford Avenue. It is in the vicinity of 2135 Crawford Avenue. It was in a two-story building, on the second floor. There was a jewelry store on the first floor. It was a regular apartment.

I saw some fellow on the second floor by the name of Andy. I don't know his last name. The room was a regular living room. I told him Flanagan sent me over there. He said, "Go to work". I figured bets. I have a sheet of bets entered in that sheet. I figure the winning bets. The sheets had a rubber band around them when I got them. They were not rolled up. The rubber band was just flat around it. Andy would give me those sheets. After I got them I figured the bets on the sheets. You

figure a bet by figuring out how much it should pay. That is all, multiply. I figured off the carbon sheet. I had another sheet there. It was an original, I imagine. I mean that I figure out each bet that was written on these sheets to determine how much, who won or who lost. I compared my results when I finished with an adding machine tape. The adding machine tape was handed me with the sheet. It was part of the same package rolled up with a rubber band. The time to figure one of these sheets depends on how much work there was, how many bets you had to figure.

I went to work at eight o'clock in the evening and worked as late as twelve and one o'clock. I worked on from 100 to 100½ sheets in a night. I worked on maybe six different packages with the rubber band around it.

There were three other persons employed up there at the time I was there. Some nights there would be six. 359 Andy was in charge of the room up there. I never paid no attention to the apartment that I worked in. I saw four or five telephones up in the apartment. There was a keyboard there. I did not pay no attention to see if there was a microphone there.

I worked at that place about three months. I was laid off by Andy. He is a short stocky fellow, around fifty. He weighed about 140 to 150 pounds.

When I left the place that I just described where I was working I went back and asked Flanagan for a job. He gave me one as a shill. I stayed there about '37 and I went in as a cashier. I got laid off.

Getting back to the place where I was working on the second floor in the apartment, after I figured up these sheets, I gave the results of the figuring to Andy. I did not hear anything more of them.

I do not know Joe Conroy.

After I left the 4020 Ogden Avenue I went to the D. and D. That is the club at Division and Dearborn. I worked for Bill Kelly there as a cashier in a book, races. I worked for Kelly at the D. and D. several months, I just couldn't tell you how long, off and on. I did not work steady there.

I left the D. and D. Club around November '37. I was looking for work until March. I went to work for Charles Smetana in March '38, located at 7515 Clark Street. That was a hand book up there. Charles Smetana was the boss. I was employed as a cashier. I worked there until last October. I did not work steadily at that place. I went

up there for several days before I got a job. Then I worked until they closed.

They opened up again and I was laid off. I went to work again. They opened up in December of '38. Then I went to work in January of '39. I worked steadily from January on until June of 1939. After that they closed.

360 I know Bill Kelly (indicating the defendant Kelly).

He was never at 7515 Clark Street while I was employed there. After I worked in this apartment I have described on Crawford Avenue I was a sheet writer a couple of days there for Flanagan. The sheets I wrote in the book looked like the sheets I had been working on in that apartment.

The purpose of a cashier in a book is to pay off the winning bets. When the ticket comes out I pay it off—that's all. I do not have occasion as cashier to make out a tape. All I know is the place where I was employed on the second floor apartment over the jewelry store was an office.

Cross-Examination by Mr. Thompson.

I don't know who this is. (Witness examines Exhibit O-125.) I seen a fellow like him. I don't know him.

WILLIS MILTON ALGUIRE, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Willis Milton Alguire. I live at 7851 Coles Avenue. I am a salesman for the Globe Hoist Company. I have been with them since May 1st, 1939. Prior to that time I was employed by the Amco Corporation, a salesman.

I made a sale to the Lightning Construction Company for some equipment to be installed at the Bon-Air Country Club, in the year 1939. The first contact made in that transaction was with Mr. Nadherny. The agreement was that on signing a contract we were to put money in escrow to be turned over to the Amco Corporation on delivery of the equipment at the site where it was to be installed. The equipment was six hydraulic cylinders and a 15-horse power motor driving pump and some steel structure.

351 That equipment was for elevating the dance floor in the dining room. I supervised the installation of that equipment in the dining room of the Bon-Air Country Club.

The cost of that equipment was \$4281.00. I was paid. On delivery of the equipment, Mr. Nadherny and I got the \$1000.00 out of escrow. On completion of installation I was paid \$2500.00 and the balance I was paid in thirty days after the work was completed. The \$2500.00 was paid to me in the office of the Bon-Air Country Club about May 20, 1939. The balance was paid at the same place thirty days later in the office of the Bon-Air Country Club by Bud Geary. The \$1000.00 was given to me in check and the other was paid in currency.

Mr. Miller: I would like leave, if Your Honor please, to again offer Government's Exhibit E-81.

The Court: It may be received.

(Said instrument, so offered and received in evidence, was thereupon marked GOVERNMENT'S EXHIBIT 81.)

RAYMOND J. HUFFMAN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Raymond J. Huffman. I am assistant Treasurer for the Scully Steel Products Company. I have been in that position about eight or ten years.

We furnished the material to an architect by the name of Nadherny for the Bon-Air County Club. The material was delivered to the Bon-Air Country Club and the cost was about \$1300.00. We were paid, I think it was along in February 1939. I don't know who paid it. The check came through the mail. I don't recall whose check it was. I have no recollection as to who made the check. I couldn't say if it was the check of the Lightning Construction Company.

I know what Government's Exhibit E-95 for identification is. That is the original ledger sheet covering this account with Joseph Nadherny. That record is kept under my supervision and control. The entries thereon are made in the usual and ordinary course of our business. That

record reflects the transactions recorded thereon on or about the time they occurred.

Mr. Miller: I will offer in evidence at this time Government's Exhibit E-95.

Mr. Thompson: We object to the document as immaterial and as in no way connected with these defendants.

The Court: Overruled.

(Said instrument, so offered and received in evidence, was thereupon marked GOVERNMENT'S EXHIBIT E-95.)

SANFORD K. HUSTON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Sanford K. Huston. I live at 1164 East 54th Place. I build roof trusses. I am the sole owner of the Summerbell Truss Company.

I did have occasion to do some work in 1939 at the Bon-Air Country Club at Wheeling, Illinois. I dealt in that connection with Mr. Nadherny, the architect. We furnished some special trusses up there. We installed them. It was in the south wing, I believe. Our contract was \$1332.00. I was paid. I don't remember the exact date but I believe that we received a check from the Lightning Construction Company for the amount of our contract. Roy M. Love signed the check.

Government's Exhibit E-100 for identification, consisting of two sheets, four pages, are sheets out of our contract register. There is an entry here which is a record of our contract with the Lightning Construction Company for work to be executed at the Bon-Air. That is the contract to which I have just testified that we performed. That entry is line 8 on that record. It appears under March 31, 1939. That exhibit is part of the permanent records of our company. It was kept under my supervision and control. The entries thereon are made in the usual course of our business. The transactions on that record occurred at or about the time the entry was made. This is a condensed record of the entire transaction. The completion date is over here. (Indicating.)

Mr. Miller: At this time I would like to offer in evi-

dence Government's Exhibit E-100 as to the entry that witness has described covering the Bon-Air Country Club, Wheeling, Illinois:

Mr. Thompson: Well, if the Court please, we object to putting in this whole exhibit here. The witness has already testified to the only matters that are material, if anything is material, and it is confusing to have all the rest of this matter in the record, duplication of the testimony that is already in, can't possibly add anything to the witness' testimony. In addition to that objection there is our usual objection that it doesn't tend to prove any of the issues in this case. After all we ought to have some limit to the amount of material that is just piled in here as duplication.

Mr. Miller: It is offered only as to the one item.

The Court: Let me see it.

Mr. Miller: Can't very well take it out. (Handing document to the Court.)

364 The Court: You refer to this one item under date of March 31, 1939, Mr. Huston?

The Witness: Yes, sir.

The Court: That item may be received.

(Said instrument so offered and received in evidence, was therefore marked GOVERNMENT'S EXHIBIT E-100.)

RICHARD LEICHSENRING, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Richard Leichsenring. My business is manufacturing art marble. The name of our company is Master-Craft Art Marble Company. I am president of the company.

During the year 1939 we did sell products to the Bon-Air Country Club at Wheeling, Illinois. Our dealings were with Architect Nadherny. We sold marble showers, partitions for toilets, washrooms, to the Bon-Air Country Club. That material was delivered out at the Bon-Air Country Club in Wheeling, Illinois. Furnished and installed I believe we charged \$5614.00 for that material. We were paid, I believe, on three occasions, in May and in June, by Bud as Nadherny called him. Bud Geary sounds like it. The payment was all in cash. I received that in 1939.

JOHN HARVEY, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is John Harvey. I live at 33 South Sacramento Boulevard. I am acquainted with the location out in Tessville known at the Dev-Lin. I first became acquainted with it in 1938, about in May. I was out towards Evanston looking for some work and I was with a friend of mine and he said to stop in to make a bet in a book. I made a bet there. I was not working at the time.

I afterwards went to work there. Jimmie Hartigan put me to work. I saw one man that I know there, Jack Sommers. I worked there. I got that job off of Jimmie. I asked him on a Saturday and he told me to come back Monday and I came back Monday about seven o'clock that night. He told me he had made arrangements for me to go to work there on Thursday, Friday, Saturday and Sunday, so I worked there about five weeks, and in the meantime I met a fellow by the name of Jim Gleason who told me was opening up a place at 4011 Monticello and I told him I worked four days a week and he said, "Well, I will take you over there with me and I will put you to work."

I worked at 4011 Monticello. I was an outside man. If anybody wanted to know where the book is I told him. Just stood out on the outside. That is about all I done there. I was instructed not to ask anybody to come in but if anybody asked me to tell them where the book was.

I was driving an automobile. I was standing around there at 4011 Monticello and this man Gleason told me I could haul people over to Harlem Stables if I wanted to, from 4011 Monticello to the Harlem Stables.

During the time I was working there I never saw Gleason, although I worked on his orders. I took orders from a fellow named Harry. After that I only seen Gleason about two times. He was going home when I saw him. He didn't give me any other orders when I was hauling people from 4011 Monticello to the Harlem Stables. I couldn't give you the exact date that I stopped working at 4011. I can't give you the accurate date that I worked driving 366 people to the Harlem Stables. I stopped work somewhere in the latter part of October last year.

Mr. Thompson: I move to strike the testimony of the witness; in no way tending to prove any taxable income of the defendant Johnson, or any attempt to evade taxable income.

The Court: Denied.

GEORGE ARNDT, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is George Arndt. I live at 5718 Kimbark Avenue. I started working at a place known as the Southland Club in the fall of '35. I applied for the job. I talked to Mr. Creighton about it. I see him in the court room (indicating defendant Creighton).

I was shilling at all the games, craps, roulette, and black jack. I worked at the Southland as a shill from '35 on as long as it was open. It was open part of the time every year since '35. I didn't keep track.

I worked at the Club Western in '39 for four or four months. I was sent there by my immediate boss. At that time it was Jake Thornblatt. I shilled at the Club Western, an extra dealer in a poker game. The address was 9730 Western Avenue.

I never met William R. Johnson. I have seen him from the the papers. I never saw him before that. I never went to any school with reference to my work.

Mr. Thompson: We move to strike the testimony of the witness; in no way tending to prove taxable income of William R. Johnson, or any attempt to evade the payment of taxes.

367 The Court: Denied.

Mr. Hurley: At this time, if the Court please, I would like to read to the jury, Government's Exhibit E-14, which is admitted in evidence.

Mr. Thompson: We object. The details of the contract can't possibly have any value in proving the amount of income of Mr. Johnson, or whether he was evading it; immaterial; just taking up time.

The Court: Denied.

(Hereupon counsel read several pages from Exhibit E-14.)

Mr. Hurley: If the Court please, the other day I was reading certain exhibits which had been admitted, which are returns of the defendant Johnson. I would like to continue with them now, reading from Exhibit R-9.

Hr. Hurley: Reading from Government's Exhibit R-9, being the individual income tax return for the calendar year 1935 of William R. Johnson, 4224 North Hazel Avenue, Chicago.

The items under "Income," line 2, "Net profits or loss from business or profession," \$44,315.70.

368 Rents, \$10,377.63;

And other items, making a total net income of \$58,000.83, with deductions in the amount of \$121.95, leaving a net income of \$57,878.88.

In the computation, the tax under the heading of "Computation of Tax," shows the amount of tax to be \$11,029.73. Schedule attached dated December 31, 1935, schedule of rental income and expense, Lincoln Park Building, total receipts \$34,061.45; expense in the amount of \$29,126.71, or a balance of \$4,934.71.

Mr. Plunkett: Government's Exhibit R-10 being an individual income tax return for the calendar year of 1936 of William R. Johnson, 4224 North Hazel Avenue.

Under the heading "Income Net Profit (or loss) from business or profession alone \$145,165.70."

Interest on bond deposit, notes, and so forth, \$2,101.85.

Rents, and royalties, \$16,189.03, or a total income in Items 1 to 11 of \$163,466.58, with deductions amounting to \$1,573.84, or a net income (Item 12 minus Item 19) \$161,892.74.

The computation of the tax shows a tax on \$71,915.35.

The Lincoln Park Building, from January 1 to January 31, 1936, the total receipts, \$38,339.29, with expenses of \$27,449.35, or a net rental income of \$10,889.94.

The schedule of depreciation on the Lincoln Park 369 Building showing a gross of \$219,254.46 and depreciation taken of \$6,901.32.

The schedule showing rental income and expense, rental income, \$6,000.00, deduct expense: 4020 Ogden Avenue, \$1,449.00; at 2141 Crawford Avenue, \$970.28.

And deduct insurance, and so forth, on 4020 Ogden, makes it \$1,449.00, and the same items on 2141 Crawford.

The schedule of depreciation on those same buildings, the depreciation on 4020 Ogden is \$516.66; and on 2141 Crawford, \$437.50.

JOHN JUNGWIRTH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is John Jungwirth. I live at 4315 North Kedzie Avenue. My business is expressing and moving. I have been in that business nine years.

I am familiar with the places known as the Horse-Shoe, Harlem Stables, Lincoln Tavern, Dev-Lin Club, Villa Moderne, Casino Club, and House of Niles.

I had occasion in my business to transport material between these places I have named. That business started in the year 1936. I spoke with Mr. Jack Sommers regarding the first business I had. I think my first business was on Kedzie Avenue. I moved a few tables from 4745 to 4721 North Kedzie. Thereafter I did other business occasionally.

I believe I have moved equipment for Jack Sommers more than ten times since 1936.

I know what Government's Exhibits O-128 to O-182 370 are. They are monthly receipts for work I have done

for Mr. Sommers. They do not indicate from what place to what place my work was done. From my own recollection I can positively state that I moved material from Kedzie Avenue to Harlem and from Harlem to Lincoln, and Kedzie to Tessville. I have moved equipment back and forth from the other places that I have named to you in the beginning that I said I was familiar with. I couldn't recall in any particular instance from what place I moved equipment and to where I took it. I have no recollection of the matter. I have moved equipment from the Casino that is located at Milwaukee Avenue and Irving Park. It is possible that some of the equipment went to Dearborn and Division Streets. It was on the second floor of the northeast corner.

I took some stuff to the House of Niles but that has been several years back. I wouldn't remember where I got the stuff I took to the House of Niles. I have moved equipment to the Lincoln Tavern. I believe I got it from the Harlem. I have moved equipment from the Lincoln Tavern to the Harlem. I do not recall having moved equipment from the Harlem to any other place except the Lincoln Tavern. I believe I got the equipment I moved to the Villa Moderne from Kedzie and Lawrence.

The character of the equipment I moved was tables, chairs and fans. I moved a restaurant several times.

I received the orders to move the equipment about which I have been testifying from Mr. Sommers.

I wouldn't know what kind of tables they were. They were all knocked down when I would get them. The legs were off; just table tops.

I have moved equipment from Dev-Lin to Kedzie and Lawrence; from Kedzie and Lawrence to the Dev-Lin. I wouldn't know how often I moved equipment to and from Division and Dearborn Club.

Each one of these sheets I hold in my hand represents a separate moving transaction done by me at the instance of the defendant, Jack Sommers. Those were the records I have. The entries on those records were made at or about the time the transaction happened. It was my regular custom to make records like that.

The notation on the back of Exhibit O-157 is where it went, to two different addresses here. I states here Kedzie and Lawrence. 21 tables to Irving Park. That refreshes my recollection.

Government's Exhibit O-162 states 20 chairs to D. and D. and four tables to Villa Moderne and bring back rugs to Kedzie and Lawrence. And the following is just a statement showing from and where to it was. It reads Kedzie and Lawrence to Harlem, Harlem to Kedzie, to Dearborn Street, and to Dearborn and Division, and back to Kedzie Avenue. That would show that the tables were picked up at Kedzie and Lawrence.

I can't figure this out. It states Kedzie and Lawrence to Harlem, and Harlem to Kedzie and Lawrence. I wouldn't know what it was. It states 32 chairs to Dearborn and Division, not to Kedzie, so there must have been a return from Dearborn and Division to Kedzie. I would not know what it was. It was just a memorandum to where I went.

That is all in my handwriting. I put that on there at the time I made these trips.

I know where the Hollander Storage Warehouse is on Lawrence Avenue. I have had occasion to bring some of the equipment I have described to that place. I wouldn't know exactly when. I believe it was November and December of last year. I got the equipment that I brought to that place from 4721 North Kedzie and also from the Harlem Stables, no other place.

Cross-Examination by Mr. Thompson.

My place of business is at 4315 North Kedzie Avenue. I have had that for my headquarters four years. My business is expressing and moving. I have a little coal business in the wintertime.

I don't know how I first got employment to do this moving that I have been telling you about. I think it came through the telephone book, and being I am only four blocks away Mr. Sommers called me. I am only four blocks from Mr. Sommers' place of business at the Horse-Shoe.

I believe I first got business from him the latter part of '35 or the early part of '36.

These slips that I have been identifying here cover more than four years of work. My first job of hauling for Mr. Sommers was from 4745 Kedzie to 4721 Kedzie. I wouldn't know the name of the place. The name of the place at 4721 Kedzie is the Horse-Shoe.

I was never in any of these places of business from which I hauled this material or to which I hauled it. I always remained on the truck, I done the loading, employees, I believe, brought the material out of the building. They were not my employees. I just pulled up at the curb, stayed on the truck and certain men brought the equipment or material for me to haul away and I stayed in the truck and done the loading. And then I drove to the address according to my directions. And when I got there there was always help to unload. I stayed with the truck and unloaded the truck. I handed the material out and someone received it. I don't know what room or floor or part of the building that received this material, nor from what part it came.

I received this material in knocked down condition. 373 If it was a table it had the legs off of it.

I could not tell from the appearance of the articles that were delivered to my truck what character the equipment was. I would not know a crap table if I saw it. I would not know a roulette table if I saw it. I would not know a blackboard or wall board for a bookmaker's establishment if I saw it. I don't know anything about gambling houses. It is my business to haul when I am hired to haul and I don't ask questions.

I get paid in cash. When I haul a job a customer is supposed to pay me right then and there. I don't have anyone in my office to take orders. My wife would answer the phone if I was not there and they would tell her to call a

number when I got back. My office is at my home. My wife delivered messages to me, then I followed through with them.

I did not know Mr. Sommers personally before he called me the first time. I believe it was through the telephone book, being that I was close by. I assume it was because I was the nearest drayman and happened to be at home is how I happened to be the one called.

Thereafter I got certain employment from Mr. Sommers. I rendered twenty-four hours service for him seven days a week. Any time he wanted me I would go there. I told him that. He did not talk to me about the character of the material he wanted hauled or how it had to be hauled and so on.

I was called at different hours of night to perform service, some times during the day, some times late at night. The first time was in the evening just before dark. I don't know what I hauled that time. I believe it was a couple of tables. I did not discuss this matter with the United States attorney over the week-end. I did not explain any of these tickets to Mr. Plunkett, so that he could get any more information than we had last Friday. I have not looked at them since, so I would not know any more about them than

I did Friday.

374 This first job says on ticket May 29, 1936, "Horse-Shoe, Moving, \$28.00". That is my handwriting on that ticket. I believe I got the order over the phone.

I did not know Mr. Sommers personally before I got my first job from him. I did not know whether it was Mr. Sommers calling me or someone else on the first job. I was just given an address to come down to the Horse-Shoe and I would go there and was told what to do and then I was paid.

I wouldn't know if the \$28.00 was the first one. I don't know what I hauled on this job that was \$28.00. That would be quite a hauling job.

I would not remember what I hauled on that job June 9, 1936, of \$6.00, on Exhibit Number 129. I would not know what these little \$4.00 jobs were for. I don't remember what any of these was.

Kedzie Motor Service is my trade name. I don't have more than one truck. We do local and long distance furniture and piano moving and storage. In the winter I handle coal and coke. I have not sold any coal and coke to Mr. Sommers.

I charge \$2.00 an hour. I wouldn't know if the \$28.00

was a fourteen hour job. That is probably for more than one job on one ticket. I wouldn't know how three hours at \$3.00 comes about. I suppose it was a night job or something like that.

Tessville is out at Devon and Lincoln Avenue. I transferred something from Kedzie and Lincoln to Tessville. "Black jack table" is in my handwriting. It is just that I was told to pick up one and when it was put on the truck I knew what it was. I just thought that was a black jack table. I wouldn't know one when I saw it.

It says on the back of 157 "21 tables Irving Park". I wouldn't know if those were dining tables. I wouldn't 375 know whether they were little restaurant tables or what they were. I don't know what the game 21 is.

Some people called me and said they had been recommended to me by Mr. Sommers. Mr. William Kelly sitting back there in the court room is one. I don't remember when that was. It was when I hauled something from the D. and D. Club, at Division and Dearborn. Mr. Kelly told me Mr. Sommers had recommended me. Mr. Hartigan called me. I done some expressing for him occasionally. He told me that Mr. Sommers had recommended me to him. I got several moving jobs from friends of Mr. Sommers. I moved his mother's household furniture. I wouldn't know offhand any other places Mr. Sommers sent me.

I believe I hauled that lumber for Mr. Love. He had a store on Kedzie Avenue. It was in the 4700 block on Kedzie. I imagine it was a store room. It was a contractor's store room. He was a contractor. I don't know whether he had a name on the front of the store. Mr. Sommers recommended me to Mr. Love. Occasionally I've done expressing for him.

I work for a lot of people except for those that Mr. Sommers sent to me. All of my coal business was from other sources than Mr. Sommers. The coal business is 10% of my work. I believe Mr. Sommers gave me 10%, maybe a little more of my hauling and maving.

My work is seasonal. From October it is the moving. It is only for three or four weeks and it is two months. Then I am moving people from one residence to another. I am pretty busy those two seasons. There is no season about these black jack tables and so on. They are good fill-ins. They move them off seasons.

When I worked for Mr. Kelly, Mr. Kelly paid me for it and when I did it for Mr. Hartigan, Mr. Hartigan paid me,

and when I did it for Mr. Love of the Lightning Construction he paid me. The only time Mr. Sommers paid me 376 is when I did the work for him. I don't know whether Mr. Love or the Lightning Construction Company have any other places of business. I believe he has got garages now in place of the store. Later on I think he had his headquarters at his garage where he kept his trucks. I do not remember when he changed from his Kedzie Avenue address to his garage.

Hollander's is a moving and storage warehouse. I haven't got a warehouse. Hollander's do not do storing for me. They were the agency for the Cubs Park Storage. I hauled some stuff from 4721 N. Kedzie to Hollander's for storage. Mr. Sommers hired me for that the latter part of 1939. It was some time after the end of September. When I got there Mr. Sommers told me to see Mr. Hartigan and I moved some stuff from the Harlem Stables. I saw Mr. Hartigan. Mr. Sommers paid me for what I hauled for Mr. Sommers. Mr. Hartigan paid me for what I hauled for Mr. Hartigan. I hauled for Mr. Hartigan from the Harlem Stables to Hollander Storage. Mr. Sommers told me when I did the hauling for him that I see Mr. Hartigan. He had some hauling to do, too.

In this whole four years that I have been talking about I did only these eighty jobs or so that is covered by these slips. That is about twenty jobs a year. This would be some for Sommers and some for Mr. Sommers' friends he recommended to me. We got to be real good friends. I could depend on him when I was in need, even to the extent of borrowing money from him. I borrowed money from Mr. Sommers on several occasions. He was just recommending me for some work.

Redirect Examination by Mr. Plunkett.

I took the material that Kelly asked me to move for him from Dearborn and Division to the Harlem Stables. That is to the Harlem Stables or from the Harlem Stables back to Division and Dearborn. I wouldn't recall when I 377 did that. I have not talked to Government counsel over the week-end. I have not talked to anybody else about this testimony. I have not done anything to refresh my recollection since last Friday afternoon. Just thought of it.

I am now testifying that all these jobs for Kelly, Harti-

gan and Sommers were separate. I would not know why all my bills which I have identified heretofore were made out to the Horse-Shoe. It was just force of habit I believe. I would not know if every one is. It appears they are. Possibly I did make out a bill for Mr. Kelly or Mr. Hartigan on scratch paper. I did not have any notation. I did not have a bill along. I would give him a receipt for his money on a paper. Possibly I would not have any record of this. I do not know where my records are on the moves I made last November I testified about to the Hollander Storage Company. They are not in my files unless they are in there. I wouldn't know how long before I moved the stuff to Hollander Warehouse that I done any moving for these individuals that I have named. Approximately during the period of five or six months; occasionally here and there.

I can't find any evidence for the moving that I did subsequent to February 9, 1939. Nobody spoke to me about these later invoices. I remember the store that I visited that Roy Love was in was located in the 4700 block on Kedzie Avenue. It did not have a sign on the front window. The do not sell anything in that store—just a store room or carpenter shop, whatever you may call it, ladders, block and tackle and different tools. It was not open to the public.

Mr. Plunkett: The Government will now offer Government's Exhibits O-128 to O-182 inclusive except Government's Exhibits O-135, 137, 139, 146, 152, 154, 156, 165, 161, 164, 160, 174 and 175.

Mr. Thompson: My objection is they are immaterial, Your Honor, and a duplication of the testimony of the witness.

378 The Court: Objection overruled.

Mr. Thompson: Also that they are in no way connected with the Defendant Johnson and the other defendants not named.

The Court: Overruled.

(Said documents so offered and received in evidence were marked GOVERNMENT'S EXHIBITS O-128, O-129, O-130, O-131, O-132, O-133, O-134, O-136, O-138, O-140, O-141, O-142, O-143, O-144, O-145, O-147, O-148, O-149, O-150, O-151, O-153, O-155, O-157, O-158, O-159, O-162, O-163, O-166, O-167, O-168, O-169, O-170, O-171, O-172, O-173, O-176, O-177, O-178, O-179, O-180, O-181, O-182.)

JOSEPH A. HOLLANDER called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Joseph A. Hollander. I am in the storage and moving business. I have been in that business about 28 years. We have three places of business, two on Milwaukee Avenue and one on Lawrence Avenue. These are warehouses that I am speaking of.

Government's Exhibits O-183, 184, 185, 186, 187, 188, 189 and 190 are records of our business. These are pick-up and delivery records. It is usual and customary in the course of our business to keep records like I have here.

Government's Exhibits O-193 to O-201 are what we call moving tickets. They are records of our business kept in the usual and regular course of business. Those entries were made at or about the time the transactions occurred.

Government's Exhibits O-191 and O-192 are records 379 of our business. These are warehouse receipts and ledger sheets. The entries on these exhibits are made in the usual and regular course of our business and it is usual and regular in our business to make such entries as these.

We did business with a place known as the Horse-Shoe. It is, I would say, over ten years when we first did business with them. When we first started doing business I remember it was located on the west side of Kedzie Avenue just south of Lawrence. They ran a restaurant there. I never saw anything else in operation.

After that the house was moved across the street a little farther down the street on Kedzie Avenue.

Our first contact with the Horse-Shoe was made through Mr. Barnes. I do not remember his first name. He has passed away. I do not know exactly when, probably three or four years ago. After Barnes died we didn't deal with anyone in particular. The orders may have come over the phone. Maybe one of the employees came in.

I know the defendant Jack Sommers. I know him about six years. I have had business dealings with him. We moved his own home at one time. I have never had any direct dealings with Sommers concerning the Johnson ac-

count, if that is what you mean. Sommers has never directly given me an order.

On each of Government's Exhibits O-183 to O-190 I find the name of Barnes. Originally the name of Barnes referred to the account of Barnes and I suppose you might say later reverted to the Horse-Shoe. O-183 says 4701 Kedzie to 3600 Devon. Exhibit O-184 says 3600 Devon to 4721 Kedzie. Exhibit O-185 says 4721 Kedzie to 3600 Devon.

The account carried under the name of Barnes was located at 4721 Kedzie. There was a charge account between us and the Barnes account at 4721 North Kedzie. I would send the bill. I never received any money.

380

Cross-Examination by Mr. Thompson.

Exhibits O-183 to O-190 are delivery records covering the services rendered to a lot of different people. The name at the top, Tanner, is the driver, and this is the driver's record from and to on all these transfers. Each sheet is a different day. It is dated. The first sheet is May 21, 1935. The next one is June 17, 1935. The next one is June 28, 1935; the next July 6, 1935; the next June 12, 1935; the next July 13, 1935; the next July 19, 1935; the next July 1, 1937. All of them in the middle of '35 excepting the last sheet and that is '37.

The batch of exhibits O-193 to O-201 are all moving jobs for either Mr. Sommers or Mr. Barnes, and O-191 is a warehouse receipt issued to James Hartigan October 26, 1939, and O-192 is a warehouse receipt issued to Jack Sommers on the same day. These entries on the back are charges and credits for storage.

Mr. Thompson: That is all, Your Honor. I move to strike the testimony of the witness so far as the Defendant Johnson is concerned, immaterial and in no way connected with him.

The Court: Motion denied.

Redirect Examination by Mr. Plunkett.

Exhibits O-193 to O-201, having on one sheet Jack Sommers, on another sheet 4721 Kedzie and another sheet Barnes, all refer to the same account.

ARTHUR W. SCHAFER called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Arthur W. Schafer. My business is sales service. I am employed by Autovent Fan Blower Company.

I have been so employed approximately 19 or 20 years. 381 I know Roy Love. I first met him about five or six years ago at the Horse-Shoe Restaurant. I was servicing a motor or exhaust fan for him at that time. It was located at the Horse Shoe Restaurant.

From time to time when it was necessary he got in touch with me to take care of a motor, service a motor and fan. During the period that I have known him, approximately four or five times a year, I would have occasion to take care of fans whenever trouble developed. I serviced fans for Roy Love in the hall above the Horse-Shoe Restaurant. There were gambling devices there. I serviced the motors.

I did work for Roy Love at Lincoln and Devon. I do not know the name of the place. I serviced a motor. He always called me whenever it was necessary. I would meet him at the Horse-Shoe Restaurant. I don't recall offhand that there are any other places for which I performed services for Roy Love.

In about April, May and June of 1939 it was exhausting equipment installed at the Bon-Air Country Club in the kitchen and dining room and shower rooms. The equipment amounted to about \$1500.

I was paid by Roy Love, part of the time by check and the balance in cash. The check given was Lightning Construction Company, signed by Roy Love. In my dealings with Roy Love I never heard of the Lightning Construction Company prior to 1939. I asked how he wanted the equipment billed and he said, "Bill the Lightning Construction, Wheeling, Illinois." The Lightning Construction Company was Roy Love. I saw him out at the Bon-Air during the year 1939 at the time there was a discussion in regards to the discharge of the stack in the kitchen, and there was a discussion with Mr. Johnson and Mr. Nadherny. I have reference to Bill Johnson. I see him in the court room. Mr. Nadherny, the architect, was

present. That was the time the kitchen was being
382 remodeled. We were trying to prevent the fumes from
being carried from the kitchen into the dining room.
They asked me if I thought the stack was satisfactory.
Mr. Nadherny asked me. Mr. Johnson made the same
remark. Mr. Love did refer customers to me. He re-
ferred Fred Gitzen. That occurred at the time the hall at
Dearborn and Division was being constructed. I took care
of a couple of fans and motors for Mr. Gitzen. It was at
Division and Dearborn. I met Mr. Gitzen at the time.
I took care of motors and the fans for him. They were
being put up in the rear part of the hall. I had other
business dealings with Mr. Gitzen on Lake Park and 53rd.
I also took care of fans there. At 9700 Western I took care
of fans and at Cottage Grove and 63rd.

The places at 97th and Western, 53rd and Lake Park,
63rd and Cottage Grove were all gambling places. Mr.
Creighton paid me for my services performed at those
places. I see him in the court room.

With reference to the check of the Lightning Construc-
tion Company it was drawn on the Deerfield State Bank.

Cross-Examination by Mr. Thompson.

I personally do not keep books of my accounts. I have
books showing work done at the Bon-Air Club at the office.
Our credit department delivered that ledger card to the
United States Attorney's office.

Our contract out there in 1939 was approximately
\$1500.00. I don't remember the exact amount. It was not
all paid at one time. I got a check from Mr. Love. He
paid it all. He always had the money on his person. The
money that was paid to me was paid to me at the club. I
don't just remember where he handed me the check but the
cash he handed me some-place around the building, I just
don't recall where. I don't recall what the amount was.

He gave me currency several times. I do not remem-
383 ber that I went up to the office of the Bon-Air to get
any of this money.

Mr. Nadherny and Mr. Love were the only persons that
talked to me about this exhaust equipment for the dining
room other than Mr. Johnson. I don't remember anyone
else around there at the time. I don't remember ever hav-

ing talked to anyone else about construction work out there. I didn't talk with anybody else I can think of whose name I can give you.

JOSEPH GEORGE WEEKS, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Joseph George Weeks. I live at 900 Montrose Avenue, Chicago.

I am acquainted with a building located at the corner of Division and Dearborn Streets. I became acquainted with it about '38, I guess. I was employed there as watchman. I heard they were opening a club there entitled the D. and D. Club and I thought I might get a job as watchman. I went down there.

After I talked to the porter I approached the gentleman called Mr. Johnson in a tiny office in the building on the second floor. This office was a part of a big room. It was empty. I told him that I had been informed he was opening a night club and I would like a position as watchman and detailed my abilities at watchman, my previous experience, and he didn't employ me, but told me to see Mr. Kelly, and I was put on the payroll by Mr. Kelly the next morning about three o'clock. I was employed by Mr. Kelly at the instigation of Mr. Johnson. I have told you I interviewed Mr. Johnson and he told me to see Mr. Kelly, or words to that effect.

I saw Mr. Kelly. I told him I had interviewed Mr. Johnson and that I would be pleased if I could get a 384 job. He said "Yes, you are on the payroll starting at three o'clock in the morning" or words to that effect.

I was watchman. My duties were to prevent any unauthorized person from approaching or leaving the building. My hours were from three to eleven.

Mr. Plunkett: If your Honor please, the Government again claims surprise. I ask leave to cross-examine this witness on what he has stated to me previously.

Mr. Callaghan: We object to that. Every time somebody comes in here and doesn't stand up just right, the

United States Attorney says he would like to cross-examine the witness. He has done it three times, now. There is no showing here that gives him the right to cross-examine this witness.

The Court: Are you taken by surprise?

Mr. Plunkett: Yes.

The Court: You may do so.

Cross-Examination by Mr. Plunkett.

I did talk to you before in one of the offices in this building. I do remember what I told you about this state of facts at that time.

Mr. Plunkett: Q. I will ask you if at that time you didn't say that Mr. Kelly had nothing to do with your getting that job?

The Witness: A. I used no such expression. I may have inadvertently left out Mr. Kelly, but I did not say that Mr. Kelly had nothing to do with it. If you have that statement down there, it is incorrect.

385 Mr. Kelly was not present in the office when I talked to Johnson.

I worked in that building between three and four months. I was down in the basement. Some times if I took the occasion I would go up to the watchman, so that I really was doing inside work. There were some times three watchmen around the building, invariably two. I was inside down in the basement. It was not upstairs. I was considered the inside watchman.

At the end of the period that I worked there I was laid off, I think by Mr. Kelly. He told me the night club was being closed. He told me that he thought the Harlem Club was going to open, that I would be re-employed in the near future. I did nothing until the Harlem Club opened; then I went out there. I saw Mr. Johnson. I said I hoped I would be re-employed in my former capacity as a watchman. He said he thought I would be and I was.

Pete Riley was the man that I approached after seeing Mr. Johnson, that I reported to after I saw Mr. Johnson.

386 I think I was at the Harlem Stables approximately ten months in 1939. I left the latter part of September. Pete Riley told me to leave.

Cross-Examination by Mr. Thompson.

I did not know Mr. Johnson when I was told by the porter to see him about getting a job. I did not know anything about his connection with the place. I was informed that this club was going to open up and if I approached Mr. Johnson I might get a job due to my previous experience. He pointed out Mr. Johnson and I approached the gentleman.

I talked with Mr. Johnson and he told me to see Mr. Kelly. Mr. Kelly told me to go to work.

The watchman inside paid me. He handed me my money every night.

When the club closed up Mr. Kelly said he didn't have any more work for me. He said he probably would have in the near future. I did not ask him if he knew where I could get some more work. He did not tell me where I could get another job. I didn't ask any such question. He simply said I would be re-employed in the future. I would get a job at the Harlem Club.

I went out to the Harlem Club to see if I could get a job and I found Mr. Johnson. I think I had to visit there twice to find him. He came down one evening, approximately between ten and twelve. He told me to see Mr. Kelly—and see if I could get a job.

Q. You talked with Pete Riley?

A. Well, I asked him was there any chance for a job; I was previously employed at the D. and D. He said, "Yes, go to work at three in the morning" or words to that effect.

The inside watchman paid me for my work at the Harlem Stables. I got paid every night. When the Harlem Stables closed up Mr. Riley told me he couldn't use me any more.

Redirect Examination by Mr. Plunkett.

387 I can point out the defendant Johnson and the defendant Kelly. (Indicating defendants Kelly and Johnson.)

THOMAS ELLIS, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Thomas Ellis. I live at 1414 North Austin Boulevard, Oak Park.

I worked at a place called Southland located at 6245 Cottage Grove Avenue. I started about the 1st of May, 1938. I was a sheet writer. I started as a shill in craps and acted as a shill possibly two weeks.

I worked as a sheet writer at the Club Southland about a year. There were from two to four sheet writers working there. I couldn't say how many shills were there. I didn't know all of them. I didn't work but about a week or so at shilling.

I talked to Mr. Creighton about getting my job at the Southland. I see him in the court room. (Indicating the defendant Creighton.) He was up in 6245 Cottage Grove when I talked with him. That is where the Southland was located. After I talked to Creighton I came back and went to work in about a week. When I talked to him he put me to work. I worked under William Foley.

I worked at the Select Club, on Circle Avenue and Harlem, in Forest Park, after I left the Southland. I think the street number is 7210 Circle. I was a sheet writer at the Select Club. I worked there about a month. My hours at the Southland Club were from eleven in the morning until six in the evening. My hours at night, as a shill, were from eight until three. After I worked at the Select Club I worked at the Proviso Club on First Avenue in Maywood as a sheet writer, about three months. I was working 388 under MacKenzie at the Select Club. They call him Mack. I never knew his first name.

I did see Creighton at the Select Club three or four times while I worked there. He came in and talked to MacKenzie, that's all. I did see Creighton at the Proviso Club two or three times while I worked there. He came in and talked to MacKenzie. MacKenzie was the boss at the Proviso, the man in charge.

I didn't work anywhere after I left the Proviso Club. We had from two to five sheet writers at the Proviso Club. My hours were from eleven until approximately six.

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The Proviso Club was a one-story building. Besides the sheet writers they just had horses in there. They had horses in the Select Club. The last day of my employment in this line as a sheet writer was July 9, 1939.

When I left the Southland Mr. Creighton sent me out to the Select Club. He told me to go out to the Select Club and work. He did not tell me what to do there. He told me to see Mr. MacKenzie. MacKenzie sent me from the Select Club to the Proviso. We moved out of the Select Club in a body to the Proviso Club.

When I worked as a sheet writer I used sheets about ten by five or six. There were duplicates made of these sheets. There was an original and one duplicate. The person who wanted to make a wager would give you a certain amount of money and after you had that money and had it written on the sheet I would turn the sheet and the money over to the cashier. I would turn over the original and the duplicate and the money. The cashier was about ten feet to my right when I was working as a sheet writer. He had a cage in front of him. There were from two to four, sometimes five, cashiers at the Southland. They all had the same equipment in which to work. I would some times bring the money and the sheets to the cashier. There were no other records that I made than these sheets. I did not ever act as a cashier. I would
389 never see the sheets again after I turned them over to the cashier. That operation ended so far as I was concerned.

I was paid at the end of each day in the form of cash. That is true of all the places I worked. Mr. John Butler paid me at the Southland. Any one of the cashiers might have paid me at the Select Club, in cash.

I got \$5.00 a day as a sheet writer, \$4.00 as a shill. The money for my services was just handed to me. I did pay Social Security when I was so employed. That is true at the Southland. I gave it to John Butler every night or every day. I paid my Social Security at the Select Club to one of the cashiers, whichever one happened to pay me. The same is true at the Proviso Club.

Cross-Examination by Mr. Thompson.

I did not ever work at any other bookie besides those I have named. That was my first experience in the gambling house out at the Southland. I was in them before. I never worked in them. I have not worked in any bookie

or gambling house since I worked at the Proviso Club. I have been drawing state unemployment compensation since July 1939. In the last month I got myself a job at 5735 North Avenue in a tavern. They take horse bets in there. They have not got a megaphone which gives the horse results in that tavern.

(Witness excused.)

LOUIS H. LYNCH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Louis H. Lynch. I live at 6450 Kenwood Avenue. I worked at the Southland Club, I believe, around 1934, for probably a year or two. I asked Mr. Creighton for work. He told me to come back later. He gave 390 me work. I came back probably two weeks after the first conversation. I see that Creighton here in the court room. (Indicating defendant Creighton.)

I wrote sheet at the Southland. I was a cashier for a short time. I acted as a sheet writer probably three quarters of the time. We had three or four sheet writers there. I worked there probably two or three months. As cashier I received the money from the sheet writer and paid out the bets. That is about all. I don't know that anybody was in charge of the cashiers. There was a man by name of William Foley who acted as manager for three or four cashiers.

I had one sheet there as a permanent record. In the evening when you balance, you turn the sheets over to Mr. Foley. I used the sheets for a pay-off and in the evening when you balance you turn the sheets over to Mr. Foley.

I did not have a duplicate. I wouldn't know what happened to the duplicate. That was not given to me at any time. When I working as a sheet writer there was usually a man that picked up the original and duplicate as you filled them out or completed them. That is the last you would see of them. When you work as a cashier you add up the sheets to see that the money corresponds with the total amount on the sheets. You do not transcribe it on any other sheet. You would put the money that you receive from the sheet writer in the cash drawer.

I worked at 119th and Vincennes. I guess they called it the 119th Club. Southland was closed, so I went out there. Mr. Creighton told me to go out there and to work out there. I worked probably a year as a sheet writer at the 119th Club. Probably two sheet writers and the same amount of cashiers.

I worked at 9730 Western Avenue probably six months, sheet writing. Mr. Creighton told me to go out there. There was nobody to speak of when I went out there. We just went out and went to work.

391 I worked at 406 East 63rd Street. I believe they called it the 406 Club, as a sheet writer, probably six months or more. Mr. Creighton sent me there. I did not see anybody over there when Mr. Creighton sent me there. Mr. Creighton had charge of the place, and we just went to work.

I did not make any further record after I received the sheets from a sheet writer, when I was operating as a cashier. There was no other record kept at all by me while I was working as a cashier. If you paid out some money, you wrote it on the original pay-out sheet. It would be the same sheet that the sheet writer wrote on. I wouldn't know if any of the other cashiers, other than myself, ever made a record other than the sheet that they got from the sheet writer.

There was usually the man we turned our money in to and the man we got our money from. I wouldn't know if he kept the record of the amounts that I had indicated as being paid out on the sheet that I got from the sheet writer, so that the only record available was that sheet that the sheet writer made. That was the only record of the payment. At the end of our work we balanced the sheets with our cash and turned them over to the head cashier and that was the end of the day's work. I don't know what he did with them. I never saw those sheets after I turned them over to the cashier. I did not at any time have any one say anything to me about my figures that I had made on these sheets while I was acting as a cashier. I did not ever make a mistake. I wouldn't know what happened if anyone made a mistake outside of correcting it. I wouldn't know if anyone else ever checked those sheets after I finished them.

I would see those sheets that I have been speaking of as cashier, the following day. They probably would be in the vault. Both the original and the duplicate would be there. I wouldn't know how long they were kept there.

I really never looked for these sheets. If there were
392 any errors why we would pick them up and correct
them and wouldn't pay any attention how long they
would be there. I said if there were any errors I would
pick them up from the vault and correct them and pay
out the proper amount. The person probably would come
in and call our attention to the error and complain about
not being paid enough, or if he was overpaid if he was
that type. The occasion did not ever arise when anyone
other than the patron would call attention to an error.
I was only cashier for three months and that is a very
short time.

Mr. Thompson: If the Court please, we move to strike
the testimony of the witness. It doesn't tend in any way
to prove the taxable income of the Defendant Johnson or
an attempt to evade payment of taxes on the taxable in-
come. This sort of testimony, it seems to me, ought to
have some limitation. It is not connected up with the
Defendant in any way and doesn't contribute to the ques-
tion which ultimately must be decided.

The Court: Motion denied.

RUSSELL B. GLAVE, called as a witness on behalf of
the Government, having been first duly sworn, was ex-
amined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Russell B. Glave. I live on Elmhurst Road
about two and a half miles north of Mount Prospect, Illi-
nois.

My brother Glenn and I operated a business on Harlem
Avenue in the year 1934. We had a tavern and sort of
a night club there. I believe the address was 4301 North
Harlem Stables. We named it Harlem Stables. I be-
lieve it was 200 feet long and about 90 feet wide. I be-
lieve it was a tile building, cork insulation and inside
393 the building there was plain pine wood. There were
two large rooms there. They were each about 90 by
100. When we moved in there was a dance floor in there
about 35 by 60. That was in the west front of the build-
ing near the street. We erected a bar there and put in
a shell for the musicians to work in. The dance floor
just covered part of the room, about 35 feet wide and

about 60 feet long. The dance floor was on top of a cement floor laid in their originally. The dance floor was raised probably four inches or so off the cement floor.

When we first came there we had the bar and back room and then we put an entrance in the front and concentrated our business on the front room inasmuch as the bar was in the front room and the show was in the front room.

We leased that building from Walter Sass. I believe the lease started in August 1934. I believe it was for a year with an option. It was not renewed. It was just a verbal agreement from month to month, something like that. I believe my brother and I had that business there about two years. I was a musician and worked for the state while this place was being operated. I did not spend very much time in the business, probably two or three nights a week; all depended how busy we were.

My brother ran the place while I wasn't there and I ran it to begin with and afterwards we found out it was too much work for us to handle, so we put a man by the name of Earl Jackson in charge of the business out there.

There were about five or six waiters and waitresses other than Earl Jackson. We had another bartender and a caretaker.

I wouldn't know the exact date this business was terminated, approximately early in August, 1936. I did go to those premises on or about that day with my brother

Glenn F. Glave. It was in the night time. I had been 394 there two days before that. Business was being carried on at that time. When I went there this time in August I found out there was somebody else in our business.

Mr. Thompson: We object to all of this as immaterial; no connection with these defendants.

The Court: Overruled.

The Witness: There were probably half a dozen workmen in the building working and preparing the building for some other business. They were laying some more wood floor on top of the cement floor in the large room. I didn't notice everything. I noticed a lot of hammering going on. I don't recall any other work. I talked to a laborer over there, one of the carpenters. I wanted to talk to the man in charge. I don't know who the gentleman was at that time but later on I found out who it was. The gentleman in the rear there, Mr. Sommers. (Indicating the defendant Mr. Sommers.) I talked to him at that time. I

told him who I was and that my brother and I had a business in that place.

Mr. Thompson: I object to any conversation outside of the presence of Mr. Johnson on this subject.

The Court: Overruled.

The Witness: I told him I would like to straighten this matter out, that my brother and I had a business there, and we didn't know that somebody else was coming in to take it over and we would like to straighten it out financially. We had some money invested there and would like to straighten the matter out. He says he didn't know me and didn't know anything about it. I couldn't get any satisfaction. He didn't say anything else.

Mr. Thompson: We move to strike all of the conversation as prejudicial and having no relation whatever to the issues at bar.

The Court: Overruled.

The Witness: When I went over there there was no 395 stock there or any equipment that I could see. We

had liquor there and beer when I left before, stock in the place, tables and chairs. I don't remember offhand how many. We had enough chairs there and tables to seat six hundred people. That was our capacity in there. I didn't see any of those tables and chairs when I went there on this evening I described. Everything was moved out as far as I know. I couldn't see anything of ours. I looked in both rooms. I didn't see our stock of liquor and beer.

Mr. Thompson: If the Court please, we object to all of this detail as immaterial and prejudicial, apparently tending to show or prove some separate, distinct crime by somebody.

The Court: Overruled.

The Witness: I did not go back there at a later date; after I couldn't get any satisfaction I had to go some place and talk to somebody else to get some satisfaction. I believe it was two days after I had been there the first time that I went back to the premises. I saw the landlord Mr. Sass there. My brother and I came together and there was Mr. Johnson, Mr. Long and Mr. Sommers. I see that Johnson in the court room. (Indicating the defendant Johnson.) I talked to Mr. Johnson. I said, "You are Mr. Johnson, aren't you?" He said that didn't make any difference who he was. He didn't say anything else but the landlord at that time told us he didn't want any trouble. Johnson was there when he said that.

We were all sitting around a table discussing this matter. The landlord advised a meeting at his home later on, the next night I believe. There was nothing else said. There was something further said by the defendant Johnson. He said I made a lot of trouble for him and made the place a ball of fire. He said that to me. I don't recall anything else being said there that night by anyone else.

There was a meeting held the following night in 396 Mr. Sass' home. Mr. Sass, my brother and I, the bookkeeper, Earl Jackson, and a bartender by the name of Roman Chlaebos was there, Mr. Johnson and his brother Elmer and Mr. Sommers was there. I see the other Johnson here in the court room, the gentleman there with the glasses on. There may have been some more there, I don't recall right at this time.

We wanted to get some money, some of our money, from the people, whoever was going to take the business over. Mr. Elmer Johnson talked to us and Mr. William Johnson talked to us about it. The defendant William Johnson wanted to know how much would clear up the whole matter. I talked to the bookkeeper and advised him that we had \$3500.00 invested in the business. I told Johnson that and he said it didn't appear to be that much to him. He said he wouldn't settle for that much money. He said it was not worth that much. He offered to give my brother and I \$100.00 apiece. I told him I thought it was ridiculous. Johnson made no answer. He finally said it would be raised to \$200.00. I believe that is all he said.

After we were paid what we could get William Johnson asked me to withdraw the complaint in the States Attorney's office. I received the \$200.00. It was taken out of Bill Johnson's pocket and eventually reached me through someone else. I saw him take the money out of his pocket. I don't know whether it was all of it or not. I don't know whether the \$200.00 all came from Bill Johnson. After he took that money out of his pocket I received \$200.00. My brother got \$200.00 also. I saw him after we were outside.

There was an agreement drawn up that night by Mr. Elmer Johnson, that is the same Johnson I pointed out here as a brother of the defendant. I saw the document marked O-202 for identification in the home of Mr. Sass on the night I have described. I saw it prepared. I saw

it executed. I saw the name Earl Jackson written
397 there by himself. I saw the other signatures, Charles

Kolarik, who is the bookkeeper down there and Walter Sass as agent for the owners of the premises. I did two days later after the meeting in Mr. Sass' home go over to the premises in which I had done business. I saw Mr. William Johnson, Earl Jackson and Pete Watzinski, and myself there, four of us. Pete Watzinski was our caretaker. I did have a talk with the defendant Johnson that night. Us four that I mentioned were present. I told Mr. Johnson that this man here had some money coming. His agreement was he was going to settle up the debts that we had incurred there, so I brought Watzinski over there to get what he had coming. Jackson wanted to know how much he had coming. I told him he had about \$150.00 coming. He asked Watzinski if he would settle for \$100.00. Watzinski told Johnson he would settle for \$100.00. That was the end of the conversation.

Mr. Johnson and myself talked about other things. I spent about half an hour there that night.

After this conversation that I have described, Mr. Johnson, Mr. Watzinski and myself went around to look at the dice tables and card tables. Mr. Johnson explained what the different gambling devices were.

I have not seen since any of our equipment and furnishings that we had there.

Q. And that was worth about how much you say?

A. Well, we had an investment in the place of \$3500.00.

The Witness: The last time I saw Earl Jackson was after the meeting there at Mr. Sass' home about two nights later after that. That is the last time I saw him. He was at the Harlem Stables.

I saw about six crap tables at the Harlem Stables when I met the defendant Johnson after the meeting at Sass' house. There were quite a few people there. They were betting and gambling. I saw poker tables and there
398 were the tables that had cards on, where you could lay a bet on the card. The back room was equipped for horse racing. I mean sheets up on the wall and things like that.

Government's Exhibit O-202 for identification was executed the evening that we met at Walter Sass' house early in August 1936. When I say Elmer Johnson wrote this document I am referring to the body of the document.

Elmer Johnson is a brother of the defendant. The other signatures appearing thereon I believe I have testified to as to whom they were executed by.

Mr. Hurley: I now offer, if the Court please, Government's Exhibit O-202 for identification.

Mr. Callaghan: If Your Honor please, I would move to strike all of the testimony of this witness on the ground it is immaterial to admit statements and the declarations of any of these defendants, and if the Court please, are not made in pursuance of the charges as are named in the indictment and more particularly none of those things alleged in the alleged conspiracy are things to defraud the United States.

The Court: Overruled.

Cross-Examination by Mr. Thompson.

When I came into the court room with three Government agents and three United States attorneys I was coming from a conference with them. I was subpoenaed to come to the courthouse to tell them my story. I sent word to my lawyer to have them subpoena me.

Q. So you carried out your threat to turn this matter in to the United States Attorney if they did not kick in \$500.00 that you demanded last week?

A. No sir. My attorney was advised to have me come in and then I was subpoenaed in.

Q. Your attorney carried your message to the United States Attorney last Friday or Saturday.

A. That I couldn't say for sure.

Q. When was the last time that you demanded \$500.00 from these defendants and said if they did not pay 399 it, you were going to tell this story you are now telling?

A. I did not threaten anybody.

Q. You told them that, didn't you?

A. I told them it was his agreement and why didn't he live up to it.

I did not tell them that if they did not kick in \$500.00 I was going to tell the United States Attorney this story. I told him it was his agreement. Why didn't he live up to it? I told Mr. Elmer Johnson I couldn't get in touch with Mr. William Johnson. I didn't know where to locate him. I did not myself try to get in touch with him through

you the other day. My lawyer may have. I don't know about that. It was left in his hands to take care of it.

I was here in the court room Friday. I did not talk to any of the defendants' representatives or anybody else. I saw them but did not talk to any of them. It was left in the hands of my lawyer to do it. I did not fix any deadline that if they did not come through I was going to tell the story.

I was called in here Saturday.

Q. You sent word to them to call you in, didn't you?

A. Not so far as I recollect.

I did not tell Mr. Cass, or whatever his name is, to tell them that I had a nice story to tell. I did not tell him to tell them anything. I asked him to collect this money.

We had a judgment against us. A man got hurt. A judgment passed against us. That was back in 1935. That was two or three years before these men had anything to do with the Harlem Stables. I did not tell them that if they did not come through with \$500.00 I would turn this story over to the Government. I never made any assertion like that whatsoever. I asked the man to pay the bill.

That is all. Nothing else was said relative to spilling 400 this story. I was subpoenaed in to come in and tell the story. I talked downstairs with the three Government Agents and the three United States Attorneys, about twenty-five minutes. They have asked me questions and I have answered them. I was called in there Saturday. I was down in their offices during the noon hour today, about twenty-five minutes. I don't know just how long it continued. I was not looking at a watch or clock or anything like that.

Mr. Johnson asked me to withdraw my complaint with the States Attorney; after I had my settlement out there I went down there and withdrew it.

After we got the \$200.00 that is as much as we could get.

Q. You lost \$3500.00 worth of goods, is that right?

A. Well, after we got \$200.00 a piece I wouldn't say it was \$3500.00, but we did not get what we had invested in the place.

We were not broke and had not already lost the place before the landlords rented it to somebody else. We had the stock of liquor there. We couldn't find it when we went back there. We couldn't do anything about it. They

just didn't want to talk to us about it. I told the States Attorney about it. Then I withdrew the complaint after we had the negotiations with the Johnson boys and Mr. Sommers.

Mr. Johnson took the \$200.00 out of his pocket. Mr. Johnson paid the \$200.00. Mr. William Johnson handed me the money.

Mr. Thompson: By the way, there is an offer pending, Your Honor. I object to it on the ground that the exhibit is immaterial and is in no way connected with these defendants, a settlement apparently between one Jackson and this witness, some controversy between them.

The Court: Objection sustained.

401 GLENN GLAVE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Glenn Glave. I live at 5058 Wolfram Street, Chicago, Illinois. I am a brother of Russell Glave.

My brother Russell and I during the year 1934 had a business located at 4301 North Harlem Avenue. The name of that place was the Harlem Stables. It was a tavern and night club.

We went into the business about September 12, 1934. We operated the business almost two years, until August 1936. The premises consisted of two rooms about 80 by 70 apiece. The room to the west had a dance floor about 35 by 60 with a railing around it, a band shell in the front and a bar along the south wall with chairs and tables around the dance floor. There was approximately 100 tables and about 400 chairs. There was concrete around the edge of the dance floor.

We did have a stock of merchandise there. There was liquor that we had for the bar, soft drinks, chairs, tables and a bar and bar equipment.

My brother and I invested approximately \$3500.00 in that place.

Mr. Thompson: We object to that as immaterial and move to strike the answer.

The Court: Let it stand.

The Witness: I did go over to the premises about August 1936 during the evening. I was employed otherwise. I always went over there on Thursday evening and Saturday evening and Sunday. I did go over there in the month of August 1936 and found the premises in a different state of affairs than they were the time they were there before.

I believe it was on a Tuesday night that my brother 402 told me that it was being occupied by somebody else.

My brother went with me. We couldn't get in there. I went back later. My brother went down and investigated why we couldn't get in. It was being remodeled, the floors were being covered, there were carpenters all around making different changes. The time I was there they were putting in a new floor over the concrete floor. Nothing else that I can recall at the present time. The bar was still there. There was nothing there in the line of liquor.

I talked to Mr. Sommers there that night and later on Bill Johnson. (Indicating the defendants Johnson and Sommers.)

This meeting was at the Harlem Stables in the front room. We were all seated around a table. The defendant Johnson wanted to know why we were there. We said we were out there in the interest of our business, the Harlem Stables, which we were conducting there, and he wanted to know what we had to do with it. We told him that we owned that business and he said, well, so far as he knew we had nothing to do with it. Mr. Sass, the agent of the building, was there. He stated that we were the original owners there and as far as he knew then we were still the original owners. That was in the presence of the defendant Johnson.

It was Mr. Sass' suggestion that everything be ironed out, at his home, regarding the taking over of the Harlem Stables. Mr. Sass invited all the parties concerned over to his home. I believe it was either the following night or the night thereafter.

There was nothing further said around this table. There was general conversation going on.

I was present in Mr. Sass' home. Mr. William Johnson, Elmer Johnson, the brother of the defendant, Mr. Sommers, my brother, myself, Mr. Sass and one of the bartenders by the name of Mr. Chlaebos and Earl Jackson was there as far as I can remember. I talked to most of

them. Johnson asked how much we expected to get
403 out of the Harlem Stables and we told him \$3500.00.

He said that was out of the question, there was nothing like that involved in it. He offered us \$100.00 apiece to get out. We said that we wouldn't consider anything like that at all. He finally told us what he would give us was \$200.00 apiece and that is all. That was the defendant Johnson. I got \$200.00 that night from the defendant Johnson. He personally handed it to me.

Earl Jackson was operating this place of business of ours on Harlem Avenue. He was present at this meeting I described. I last saw Earl Jackson about three or four weeks ago out at the Bon-Air Country Club. He was a bartender.

There was a further agreement other than the payment of \$200.00 to myself and my brother. The defendant Johnson said that he would keep us clear of any liabilities pertaining to the Harlem Stables and that he would put that in writing.

Cross-Examination by Mr. Thompson.

I was up in Mr. Elmer Johnson's office about two and a half weeks ago. I did not tell him that if they did not pay \$500.00 we were going to give the story to the newspapers. I was up there before two and a half weeks ago. There was no mention made of any price. I told him that there was a judgment pending regarding the Harlem Stables and when I first went up to him he said he would see what he could do about taking care of that. I did not tell anybody that I was going to give this story to the newspapers if they did not come through. I mentioned nothing about newspapers. I said that if they didn't pay this obligation I would publish the story.

Redirect Examination by Mr. Hurley.

The obligation that I was talking about was a man that claimed he worked for us and was injured and he had it
up before the Industrial Commission and at the time
404 of the agreement that was signed there Mr. Johnson said that if that was predated two years ahead of time that we would be cleared of everything. Elmer Johnson told me that.

Government's Exhibit O-202 for identification is the doc-

ument I am referring to. The body of that instrument is in Mr. Elmer Johnson's handwriting. I saw him write that, I saw the signature Earl Jackson placed on there by Earl Jackson and the other name, Charles Kolarik. He was our bookkeeper. I saw Walter Sass place his signature on that. He was the agent for the owners of the building. That bears the date of September 12, 1934. That was placed there at the suggestion of Mr. Elmer Johnson.

The defendant William Johnson was there at that time. I don't know if he was in that conversation but that was the wording to keep us in the clear.

There were two rooms there, the front room and the dining room that this meeting took place in. The name of the employee that was suing myself and my brother was Frank Cepage. He had not been an employee of ours. He was at Riverview Ballroom back around 1934.

Recross Examination by Mr. Thompson.

I went to see Elmer Johnson about this paper that has been shown to me. This paper is a settlement with Mr. Johnson. Mr. Johnson's name doesn't appear on it anywhere. Neither does this other man's name I have mentioned that I now say had a judgment against me.

JOHN J. HAYES, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is John J. Hayes. I live at Crown Point, 405 Indiana. I was employed at an establishment located at 4020 Ogden Avenue for about two years, 1931 and 1932, in the capacity of a skill.

Q. Who was your boss at that place?

Mr. Callaghan: Objected to; 1931 and 1932.

A. John Flanagan.

The Court: Will you connect this up?

Mr. Plunkett: It is preliminary. Yes.

The Court: Are you going to connect this up?

Mr. Plunkett: Yes, we expect to.

The Court: How?

Mr. Plunkett: (Out of the hearing of the jury.) This witness will identify various of these defendants who were working there at that time. He will identify the defendant Johnson as being there at that time. And describe the manner in which he left that place and where he went, and how he was sent from that place to another place at which he subsequently worked for some years.

The Court: Very well. On the undertaking the objection will be overruled.

The Witness: My boss was John Flanagan. Red Creighton was working there as a floor man. Reggie Mackay was there as a cashier. Jimmie Hartigan was there as box man. I see Creighton, Hartigan and Mackay in the court room. While I was employed there I have seen the defendant Johnson there. Sometimes twice in a week, and possibly three times in another week. I daresay an average of a couple of times during the period. Johnson just talked to people and occasionally talked to Flanagan.

I have seen him sitting back there at a telephone.

406 Q. Now during the time that you worked at 4020 Ogden Avenue, will you state whether or not a robbery ever occurred there?

Mr. Thompson: What? That is objected to, if the Court please.

A. Yes, sir.

The Court: What is the relevancy of that?

Mr. Plunkett: Well, it is preliminary, if the Court please.

The Court: I don't see it at all. I can't connect it.

(Out of the hearing of the Jury.)

Mr. Plunkett: The witness will testify that after the robbery the defendant Johnson came in, was called immediately over, came in and questioned the employees about it.

(In hearing of Jury.)

The Court: Objection overruled.

The Witness: It was in 1933, to the best of my recollection, I saw the defendant Mr. Johnson come in to the place twenty minutes after the robbery to talk to Flanagan and Tony Steel and two or three others. I didn't notice how long he talked to them. I was able to see his face at the time he was talking to these persons.

407 Q. Can you state whether or not the expression on his face was—with reference to the expression on his

face, what did his expression show, anger or pleasure, or what?

Mr. Thompson: I object.

Witness: A. I would say he was angry.

Mr. Thompson: I should like to object to this line of testimony.

The Court: Overruled.

Mr. Thompson: Can't have anything to do with the income of Mr. Johnson.

The Court: Overruled.

The Witness: He just stood there and talked to Flanagan and Tony Steel.

During the time I was employed at 4020 Ogden Avenue we moved a couple or three times to 2141 Crawford and the 3900 block on Ogden, and I think once in the 3700 block on Ogden, in a garage.

I left 4020 Ogden Avenue for other employment. John Flanagan sent me to Kedzie and Lawrence. This was just before Christmas in '33.

Mr. Callaghan: Objected to. Your Honor, please, as not being material to the issues in this case.

The Court: Overruled.

The Witness: John Flanagan said that inasmuch as I live over on Lawrence Avenue it will be closer for me to work at Kedzie and Lawrence. He told me to report there the next night. I did go up there the next night. I saw Tom Barnes there. It was in the Horse-Shoe Restaurant. I was employed after that. He put me to work shilling. I was shilling at 4721 Kedzie on the second floor. I worked on the Keno for a while and then I wrote sheets.

When I first went up there I didn't know anybody. 408 Barnes sent me to Connie McGrath who put me to work. I worked at the Horse-Shoe until they closed the following summer. I didn't do anything after they closed. I believe they were closed ten weeks. We opened up at 4721 again and I went back to work.

I was not always working under Barnes at that place. The last time I saw Barnes was in 1934 at Smith's Undertaking Parlors. He was dead at the time. I last saw him alive in 1934 at 4721 Kedzie. If I recall right, he was talking to Jimmie Hartigan and Bill at a desk the last night I saw him and I never saw him after that until I saw him at the undertaking parlors. That night there was a desk just inside the entrance of the room right out in

the open and Mr. Barnes and Bill Johnson and Jimmie were just sitting there talking. I saw Jimmie Hartigan almost every night after that while we were working. He was the boss. Before that, the last time where I was sure he was was when he worked at 4020 Ogden Avenue. The defendant Hartigan was the boss up there after that as long as they ran as far as I know.

I don't recall that the defendant Sommers was around when I saw the defendant Hartigan and the defendant Johnson and Tom Barnes talking at the desk.

While I was working in the Horse-Shoe we moved a couple of times. Once we moved to the 4400 block on Kedzie, once we moved in the 4300 block on Kedzie, once we moved to Lawrence Avenue and River, in a garage; once we moved out to Tessville. I believe they call it the Village of Lincolnwood now. I believe they call the place the Dev-Lin now.

To my best recollection we moved to the Dev-Lin in 1936 and stayed there four or five months. We did not move from there. I believe we closed down completely.

I was next employed after that at the Lincoln Tavern.

Jimmie Hartigan put me to work. Jimmie Hartigan 409 was working at the Lincoln Tavern as floor man. Jack Sommers seemed to be in charge of transportation. Bill Kelly was box man on a money game. Mr. Flanagan was sitting out in front of the cigar counter. He was sitting on a chair just out of the cigar counter before you went into the Casino. He shook hands with people that he knew evidently.

I have seen the defendant Johnson out there. I did not see him do anything else.

I shilled for a while at the Lincoln Tavern and wrote sheets for a while. I worked there from about Thanksgiving until the following summer, '35. They played craps, roulette, and black jack there. That did not continue all the time I was employed there. The City opened up and I stayed out there as a sheet writer on the horses. Simply running the book for a while.

George Ogran was my boss out there. I believe the only time I ever picked up a phone was when the service man went to the washroom a couple of times. That did happen.

I don't know who talked over the phone on that occasion.

After I left the Lincoln Tavern I went to 4721 Kedzie.

I don't recall the exact circumstances. I believe that Lincoln Tavern closed up. Captain Gilbert came out there and pushed things around a little bit.

I was next employed at the Horse-Shoe. I believe that time I drove a car from the Wilson Avenue L Station to Kedzie and Lawrence. Jack Sommers told me to drive the car. That was my employment. I got \$7.00 every day for driving. I was paid \$5.00 as a sheet writer. My duties driving a car was to drive customers if they wanted to go from the L Station to Kedzie and Leland.

I drove a car out at the Harlem Stables. That was in the same period of time I was talking about. Once the

Horse-Shoe was running on horses only and the Stable 410 had side shows on, and if a customer wanted to play the horses, we dropped him at Kedzie and Lawrence, and if they wanted to play the side games we took them out to the Harlem Stables or dropped them there and other cars would take them out. I drove about three months at that time.

I next went to the D. and D. Club. Jack Sommers sent word by Morry Weiss that I should report to the D. and D. Club the next day. I did the following day. I did have a conversation with the defendant Sommers between that time. I had just traded the old Chev in and went \$400.00 in debt for another car because I thought I was going to be driving, and I went over and explained to Jack that I went in debt, but he told me to go to the D. and D. anyhow. I believe that time we were there only about three months.

I wrote sheet at the D. and D. At that time that was all there was. After the three months we closed down for a short time and later re-opened at the D. and D. I was a sheet writer after they re-opened, and then Bill Kelly let me work a little extra on Keno and later let me break in on dealing craps. During the time I was employed at the D. and D. I always worked at that address.

I worked at 4721 N. Kedzie when I stopped working at the D. and D. I worked twice at the Harlem Stables. I first worked there in 1937. The second time the D. and D. closed, we all moved out to Harlem Stables. I always considered Bill Kelly as my boss at the Harlem Stables the first time.

Jimmie Hartigan and Jack Sommers were working at the Harlem Stables when I was. Jack does a little of everything, floor boss, transportation boss, all around man.

Hartigan was floor man or boss. Anyway he seemed to be giving orders.

When I left the Harlem Stables I believe I went to 4721 North Kedzie and stayed there until they closed. Jimmie

Hartigan was my boss there. There were shut-downs 411 during this period. I don't recall the exact dates but when the places would open I would go back and go to work.

I was employed in Miami, Florida, in the winter of 1939. When I came back from Miami I went to see Bill Kelly at the D. and D. Club. It was the first of March, 1939. I told him I was looking for work. He said he would take care of me. I asked him for some money. He kind of laughed. He said he would take care of me. He asked me how much I wanted. I asked him for \$20.00. He kind of laughed and said that was more than he had. He did not give me the \$20.00. He gave me part of it. He got the money from Frankie Kalus. I walked up to the front with him and he put his hand in and Frankie Kalus gave him an envelope. I saw Kelly open the envelope. There was a five and ten bill in it. He took it out of a little brown envelope. I was paid with an envelope. That envelope was similar to the envelope I was paid in.

I worked at the Casino in April and May of 1939 on Saturday afternoons. I worked as a sheet writer. Larry was my boss. I will state what my duties were at the Casino. They had a lot of tickets with numbers on, and betting pads with corresponding numbers. When somebody made a bet on a horse we recorded the bet, handed the customer a ticket and took his money. The sheets used were kept in duplicate. After we recorded twenty bets or until our race got off, that is, if we recorded twenty bets, we tore the top sheet off and put the money on the top sheet and put the whole pad with the duplicate laying on it, there, and the cashier, if he was not busy, he would come down and get it; otherwise a runner picked up the money and the sheet and gave the original to the cashier and took the duplicate and put it in a box. I have never seen any duplicate sheets after I had finished the day's bets. Occasionally if we happened to close early when there was not much business, we would sort the duplicates, each 412 part that we had written, then just put a rubber band on them and lay them in the service room. Each cashier kept his originals. At Kedzie and Lawrence they

were put in a safe that was back there in the back. After I finished wrapping up these duplicate sheets I never saw them again. Occasionally I would see the original sheets. I had no particular duties in seeing them but I have seen the cashiers take them out and straighten a customer out on a bet or something of that sort. I have destroyed the original sheets while I was working at Kedzie and Lawrence at the Casino, after they had been used for the day's purpose, at the direction of George Ogren.

During the course of my employment I had duties with reference to slot machines at Kedzie and Lawrence. Occasionally I would make change for the slot machine. I believe once or twice I have made change for them at the Lincoln Tavern but nothing to do with the machines themselves.

I have never had the job of running cash between cashiers' tables and dice tables, but I have seen it done. I could explain how the dice game is played, who the persons are employed by the house and what their position is and what their duties are. I dealt crap for a couple of years. There is four dealers who work. Three of them work at a time, work forty-five minutes and fifteen minutes off, and there are two box men who sit in between the two dealers and is in charge of the game and the other one sits around. There is a platform with a stool on top of it. He sits up there watching. On one side of the table is a stick man who calls the dice. On the other side there is two dealers and a box man. The stick man is on one side of the table with the stick. He takes the dice and throws them to a customer. When the customer throws them across the string on the other side of the table he calls out the roll of the dice. If it is a point, he takes it. If it is seven or eleven, a winner, he calls it. If it is a loser he calls it. He just throws them back to the customer
413 who throws them across the string again.

There are two dealers, one at each side of the table, and the box man between. The dealer sells checks, takes the losing bets and pays the winning bets. The box man is in charge of the table to see that the stick man is calling the proper numbers, to see that the dealer is giving the proper amount of checks out, when people buy checks, and to take up the bets that are lost and properly pay the bets that are won.

If a person buys a check from a dealer he lays the money

in front of the box man who picks it up and puts it in the box. Every hour, or hour and a half, the cash runner takes the box and carries it to the cashier. When a person is finished playing and wants to cash his checks in he hands them to the dealer on either side of the table. The dealer does not have any money to pay him. He lays the checks out, the box man calls the check out, the cash runner brings the money from the cashier. In the larger places there is two men up there, one writes the ticket and one hands the money out and the money that is taken in for buying checks is put in the box that is taken to the cashier and the money that is given back when he checks the cash in comes directly from the cashier.

I have never seen the cashier's sheet made out. I have seen the blanks. The cashier's stand is higher than the floor. That is true more or less in larger places. The smaller ones are some times a little bit different. Generally in the smaller places there would be just one cashier and the floor man would carry the book and make out the ticket and send to the cashier for the money.

The ticket is simply a piece of paper perforated in the middle so that he makes it out twice, one he hands to the cash runner to go get the money, and the other one exactly the same. That is retained in that book. Any time anyone cashes in the floor man makes that record. He keeps 414 one in his book and sends the other to the cashier.

Shortly after the time I last saw Tom Barnes in 1934 I talked to Jimmie a number of times. I was working on the Keno. I was the cashier in it a good many times. At Keno intermission Jimmie would come in and sit and talk topics of the day. I recall one time we were talking about hot dice. That was in the winter of 1934. This took place at the Horse-Shoe.

Q. Will you state what the conversation was?

Mr. Thompson: We object to any such conversation way back in 1930.

Mr. Plunkett: '34.

Mr. Thompson: Well, whenever it was, it is prejudicial.

The Court: What is the materiality?

Mr. Thompson: Prejudicial and inflammatory.

(The following proceedings were had out of the hearing of the Jury:)

Mr. Plunkett: The witness will testify that the defendant Hartigan made a remark at one time he had played

dice against Bill. That was before he was working for him. That is the purpose of the testimony to show at that time he was working for him. He stated before he was working for Bill he had a little experience. We are entitled to show the condition of things in '34.

Mr. Callaghan: It is a question of whether it was a violation of the income statutes of 1936, '37 and '39. The charge of this indictment in the fifth count of the conspiracy began on or about January 1, 1936. This man, nine-tenths of his testimony has been in the year 1932, '33 and '34. 415 Now they are asking for a conversation in 1934, a conversation at a period of time long ante-dating any alleged conspiracy here.

Mr. Plunkett: The indictment charges conspiracy prior to that time.

The Court: Objection overruled.

(The following proceedings were had in the hearing of the jury:)

Mr. Plunkett: Q. Will you please state the conversation you had with the defendant Hartigan at that time?

A. Why, the dice were very hot.

Talking about hot dice, Jimmy said that, "Did I ever tell you what I did to Bill one time?"

And I said, "No, you didn't."

And he said, "Well, I was out one night. On the way home I stopped in at 4003 and the game was kind of thin. Trying to hold the game I went in to shill, to hold the game together."

He said, "I threw up a hand of 19 passes. After I got through the man quit."

So he said, "It doesn't make any difference who was shooting the dice, whether they came out of the chute; if they are hot they are hot."

Q. Did he state when--

Mr. Callaghan: I submit, if your Honor please, that demonstrates the immateriality of this testimony. It ought to be stricken.

Mr. Plunkett: If the Court will allow us to get the 416 rest of it.

The Court: Go ahead.

Mr. Plunkett: Q. Did he state when that occurrence had transpired?

A. I don't recall that he mentioned any specific time.

Q. Did he say it with reference to anything else, rather than time?

A. Yes, I believe he said that was before he was working with Bill.

Q. Do you know the Bill he was referring to?

A. I assumed it was Bill Johnson.

Mr. Thompson: I move to strike out the answer.

The Court: Strike it out.

Mr. Thompson: I move to strike all of this business about the dice being hot. I do not know what hot dice is. I am sure it has no bearing on any issue in this case.

Mr. E. Riley Campbell: It is the business we are talking about here.

The Court: The only relevancy I can see in those last few answers is that statement, that was before he worked for Bill.

Mr. Thompson: Was what?

Mr. Plunkett: May I ask the question?

Q. Do you know who was meant by Bill?

Mr. Thompson: We object.

The Court: You may answer.

The Witness: I assume he meant Bill Johnson.

417 Mr. Callaghan: I ask that that be stricken.

The Court: Q. Why did you assume?

A. Because, after all, he was called Bill so often, so much.

Q. What is the answer to my question?

A. He was called Bill so often that I just naturally assumed that he did mean Bill Johnson.

Q. Who was called Bill?

A. Mr. Bill Johnson was called Bill.

Q. The defendant Bill Johnson?

A. Yes.

Q. You were so often in your conversations you assumed this conversation was about him, is that it?

A. That is true, yes, sir.

The Court: Well, that may stand for what it is worth.

Mr. Thompson: I move to strike all of this testimony about the conversation about hot dice, or whatever it is, as inflammatory and prejudicial and as having nothing to do with the issue in this case.

The Court: I do not know what it means.

Mr. Thompson: That is the very reason I want it out.

The Court: The conversation about hot dice may go out. The statement as to the time of the conversation may stay in.

Q. What do you mean by hot dice? Do you mean dice that are performing?

A. Dice that are passing.

Q. What does passing mean?

A. When you bet and the dice hit, and hit per-
418 sistently, you say they are hot.

Q. If they are doing what you want them to do, is that it?

A. If you are betting the line, you are betting that they hit and they do hit, they are hot.

The Court: I guess I won't try to learn.

Mr. Plunkett: Cross-examine.

Mr. Thompson: Was this for or against Mr. Johnson? I forget what the conversation was.

The Court: I did not hear you.

Mr. Thompson: I say I have forgotten whether he said Mr. Johnson was winning or losing on these dice. I do not see how it is material otherwise.

Cross-Examination by Mr. Thompson.

I live in Crown Point, Indiana. I have been unemployed for some little time. I never had charge of the slot machines in Lake County, Indiana. I have done a little work since the gambling was curtailed here last September, for a lumber compay at Crown Point. I did not do any work around town or around the county.

I ran a barbecue stand before I began work in the gambling clubs, at Fort Lauderdale, Florida. I came to Chicago because of a hurricane, which blew me out of business.

I commenced working up here in Chicago for Flanagan in 1931. I done a little work for Johnnie Horan before
419 that. He got me a job with Flanagan. Johnnie Horan is a brother of Dennis Horan of the Sanitary District. I couldn't say whether Dennis Horan and Captain Gilbert of the State's Attorney's force are pretty good pals. I knew Captain Gilbert from his pictures I had seen in the papers. I was standing pretty close to him at the Lincoln Tavern, so I knew it was Captain Gilbert. Johnnie Horan drove me over and introduced me to Flanagan. When Horan asked Flanagan to give me a job he gave me one. Then I worked
420 all around town, first one place, then another, when they were operating. The places operated some times

for quite a while. I would say we worked ninety per cent of the time in one place or another. The only time I was ever in a raid was the time I spoke of, in the Lincoln Tavern, when Captain Gilbert came up here. He pushed things around considerable. He did not take me to jail. He took Claude Sullivan over to the Morton Grove Station.

I have seen many people in gambling houses. I never knew their names. They used to come in pretty regularly. I worked in gambling houses here in Chicago from 1930 to 1939. Besides those that I have named here I have seen customers in the gambling houses that come in every day and gamble place bets on horses and when I was dealing craps they would play craps, but I was not introduced to them formally. I don't know what their names are. I heard the names of a few of them. The people that played the horses played in the afternoon until six o'clock or so. The betting started when the races started and continued until the races closed about six o'clock. Both men and women came in to bet on the horses.

Some of these places were pretty nice places. These Keno games were in the evening. Women predominated. I don't know where they came from. This game Keno is some times called Bingo. I wouldn't call the persons gamblers that were playing that game. It was sort of a parlor game.

I have worked at the Keno game at Kedzie and Lawrence, the D. and D., Dev-Lin and the Harlem Stables, at different times. It was not a regular thing to have a Keno game. Every night was Ladies' Night while the Keno was running. Generally they didn't conflict with the crap because there weren't so very many Keno players. It takes a lot of room for Keno. You have to have a lot of people playing Keno to make it any game at all.

They played Keno in the same room where they played craps in the D. and D., and they did at the Dev-Lin, 421 and they did at Kedzie and Lawrence, but they did not at the Harlem Stables. They had a great big room about three times as large as this that they used to play Keno in.

I didn't consider what Jimmie Hartigan was telling me about Bill as a joke. It was just explaining to me, or trying to impress me, I imagine, that it didn't make any difference who was shooting the dice, or whether they came out of a chute, if the dice were hot they were hot. Jimmie didn't beat Bill. The way I understand he was trying to

do Bill a favor by holding the game so that it don't collapse, leave just one or two customers, and the game would break up, and he went in to try to hold the game, and he shot a couple of hot hands and the customer won a lot of money and quit. Jimmie was rolling the dice and the customer was betting on the dice and winning.

ARTHUR ATLAS, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Arthur Atlas. I am a public accountant. I have been practising for ten years. I know William R. Johnson. I see him in the court room. I met him about five years ago in December of 1935, at the Lincoln Tavern on Milwaukee Road. I had a talk with him at that time.

Q. What did he say to you and what did you say to him?

Mr. Callaghan: Objected to as antedating the time laid in this indictment; further, not binding on the other defendants.

The Court: Overruled.

The Witness: I was introduced to Mr. Johnson. He asked me if I could install a system in the dining room and the bar that would enable them to know whether they were making or losing money each month. This system was to be installed at Lincoln Tavern. I told Mr. Johnson that, of course, I could do that. I was instructed to proceed with that. I was introduced to a Mr. Roy Love who was directly in charge of this dining room and the bar, and at the same time I was introduced to another gentleman called Mr. Ed Wait. I see him here in the court room.

I installed that system, which required several trips coming up here. All my contacts were with this Mr. Roy Love and after completing one month's work I submitted a report, and I was told to submit it to Mr. Wait.

At the time I spoke to Mr. Johnson he told me that all my dealings should be with Mr. Love and Mr. Ed Wait, so this first report was submitted to Mr. Wait. A month later another report was submitted to Mr. Wait. The second report covered January 1936. The first report covering December 1935.

Mr. Wait had nothing to do with the dining-room and the bar. He was in the other room, a large room for gambling. I was in there several times. I saw dice tables and various gambling tables there.

ROBERT THIBERT, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Robert Thibert. I am in the bus transportation business. I operate under National Tours, Inc. since 1936. Prior to that we were under Chartered Bus Service.

I know the defendant Jack Sommers. I first met him in December 1935 at the Lincoln Tavern, Morton Grove, Illinois. I had a conversation with him. There was an employee of the Chartered Bus Service with me. The conversation was in regard to bus transportation. Mr. 423 Sommers wanted some buses to run from Wilson and

Broadway to the Lincoln Tavern. We discussed running buses between Wilson and Broadway and Lincoln Tavern, Morton Grove. We discussed the type of equipment and the price and reached an agreement to start running buses for Mr. Sommers between Wilson and Broadway and Lincoln Tavern. We started running the buses in December. I don't remember the exact date. The buses ran from Wilson and Broadway and we stopped at Kedzie and Leland and made a pick-up there, then out to Morton Grove.

We were paid on a mileage basis in cash. I received the cash myself. Mr. Sommers paid me once or twice. Most of the time I was paid by the doorman. He would go in and get the money and pay me. We ran buses to the House of Niles from a place on Milwaukee Avenue. It was east of Irving Park Boulevard, to the House of Niles, in Niles. The arrangements were made by Mr. Sommers. He called me and asked if I could furnish transportation on the same basis. I said I could, which we did.

We started, I think, buses to the House of Niles in February 1936 and ran about two months. We ran buses to the Harlem Stables, Harlem Avenue. The bus started at Wilson and Broadway. We made a stop at Kedzie and Leland. We ran buses to the Harlem Stables at the request of Mr.

Sommers. We ran buses from 63rd and Cottage Grove to 119th and Vincennes. We performed that service at the request of Mr. Sommers, who asked me if I could furnish transportation between these two places on the same basis we had been running the other places. I told him we could and he said we should prepare to run the service.

Government's Exhibit O-203 is an account sheet we kept of revenue and expenses on the Lincoln Tavern run, which is marked "Lincoln Tavern Run".

Government's Exhibit O-204 is the same thing, expenses and revenue on the House of Niles run.

Government's Exhibit O-205 is the cash book listing the bank deposits made by National Tours, Inc.

424 It shows our receipts and expenditures during that period. They are records of our business and were kept in the usual and regular course of our business. It is regular and usual in our business to keep such records. I have prepared a summary from these records of the services that we performed that I just testified about. I can from the summary tell the exact times that we ran buses to these different places.

Mr. Thompson: If the court please, we object to any such detail as having no bearing on any issues in this case, and no proper foundation laid for such testimony.

The Court: Overruled.

The Witness: We started to run the bus to the Lincoln Tavern in December '35 and ran to approximately May 10, 1936. We ran from Wilson and Broadway to the Lincoln Tavern from December '35 to May 10, 1936. We collected approximately \$18,000.00 in this period.

Mr. Thompson: We object to any details of how much he collected. What has that got to do with this case?

The Court: Overruled.

The Witness: Then we ran buses to the Lincoln Tavern for about ten days in December 1936. We ran buses to the Lincoln Tavern in June, 1937, for four or five days. I don't have the exact number of days. We ran buses from the House of Niles in February and March of 1936, and then again in July, August and September of 1937. I have a record of the approximate amounts paid us for all the different runs. In December 1936, Lincoln Tavern, we took in approximately \$1300; in June, 1937, Lincoln Tavern, approximately \$476; the House of Niles, February 1936, \$350. In March 1936, about \$900; July 1937, \$900.

In July 1937 we were running to the House of Niles.

August, 1937, \$1100; September, '37, \$237. They all refer to the House of Niles.

We ran to Harlem Stables from Wilson and Broadway 425 way February to September, 1937. Took in approximately \$7500.

We ran to 119th and Vincennes from June to September, 1937, and took in approximately \$10,000.

That completes all of that.

We did work in 1939. I believe in January, 1939, we took in approximately \$420.00 running between Wilson and Broadway and Harlem Stables.

We were always paid in cash for all this work. We were paid in mostly tens, twenties and some fives. We did not at any time ever get one hundred dollar bills.

Mr. Thompson: We move to strike all of this testimony as in no way connected with defendant Johnson, or in any way proving or tending to prove taxable income of the defendant Johnson, or any attempt or act to evade payment of taxes on the taxable income for any of the years covered by the indictment, or any other period.

The Court: Overruled.

JOHN FRANK HARDIN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is John Frank Hardin. I am vice president and treasurer of the Vitrolite Products Company. I have been in that position since 1922. In 1939 I had occasion to do business with the Bon-Air Country Club. We put in partitions of Vitrolite, some wainscoating on the walls, toilets, also some glass in the doors. Our contract came to \$1,180.00.

We were paid at the Bon-Air Country Club in currency.

I personally received payment.

426 Mr. Thompson: We move to strike the testimony as not connected with the defendants, and as immaterial to the issues.

The Court: Motion denied.

THOMAS KEHOE, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Thomas Kehoe. I live at 3229 Leland Avenue. I was employed in the establishment known as the Horse-Shoe. I was first employed there about 1932. My boss was Tom Barnes. He remained as my boss until the time he got sick, two or three years later. After that Jimmie Hartigan was my boss. I checked coats at the Horse-Shoe.

We had occasion to move from there to Lincoln Tavern, Tessville, 4745 North Kedzie Avenue, and next to the fire station on Kedzie Avenue. I always went with them when the place moved with the exception of one time I got a job in a cigar store on the corner of Kedzie and Leland. I met Mr. Johnson and Mr. Sommers at the Lincoln Tavern in 1935. I asked for a job. Mr. Johnson said, "Well, you go to work at the cigar store on the corner of Kedzie and Leland". He says, "There is a cigar store on the corner. You go to work there". After Mr. Johnson said that I went to work at the cigar store. I believe I started the next morning. It was a big store. About half-way back there was a partition. There were some tables, crap tables, a meat cutter, ice box in the premises. This cigar store was used for a bus station to take the players out to Morton Grove. We had telephones in the cigar store. I had occasion to use the telephone. In the course of my duties I might have occasion to call the Lincoln Tavern and they would call me.

427 I started work there in the fall around September or October. Then I worked through the summer up until about September or October. Then I got the restaurant job.

I was cashier in the Horse-Shoe Restaurant. Mr. Sommers gave me the job. I started in the fall of 1936 and I worked all through that winter. Then about September the place closed. When the restaurant closed everything closed at that time. I would say that they were closed from September until about February. I did not do anything until about February. Then Tessville opened. I went out

to Tessville at that time. I saw Jack Sommers and Barney McGrath, out there. I stood around there for a while and walked over to Jack Sommers. He said, "You start to work tomorrow in the checkroom". So the next night I went out and went to work in the checkroom. I worked from about February all through the summer up to September.

I believe I worked at Tessville about four times. When I speak of Tessville I mean the Dev-Lin on the corner of Devon and Lincoln Avenue. There was occasion when I went out to Tessville that I did not work. I can't remember just what year it was. It may have been 1938. On that occasion when I went out there I saw Mr. Johnson and Jim Hartigan. I had a conversation with Mr. Johnson. I believe at that time there wasn't enough jobs to go around but there was somebody working in the checkroom. So he said, "Well, there is nothing right now but I will give you \$10.00 a week". So he told Jimmie Hartigan to O. K. the \$10.00. So I came in on Saturday night. I would get the \$10.00. The cashier would pay me. That is all I did when I worked at Tessville.

When I went out to the Lincoln Tavern I was cashier at the restaurant. Jack Sommers was there as one of the bosses. Jimmie Hartigan was there in the capacity of boss. I am not sure whether Ed Wait was there.

I am acquainted with Roy Love. I have known him about twelve years. I first met him at the Horse Shoe 428 Restaurant. I seen him at the Harlem Stables, Lincoln Tavern, Tessville, 4721 Kedzie and 4745 Kedzie. When I got acquainted with him he was in charge of the Horse-Shoe Restaurant. Subsequent to that, he had charge of the work around there, that is, anything to be built like platforms or anything like that.

I saw Roy Love at the Lincoln Tavern. I believe he was doing some work around the cashier's cage. He was kind of superintending a job, doing some work around there on the floor. There were some boards to be torn up or something around there. He was stringing up lights at the Dev-Lin when I saw him. I saw him helping fix or lay out some tables with one of the porters at the Harlem Stables.

I know the defendant William P. Kelly. I saw him at the D. and D., also at 4721 N. Kedzie, the Horse-Shoe. He was box man at 4721 N. Kedzie, four or five years ago.

I am acquainted with the defendant Ed Wait. I met him about 1935 at Tessville, in charge of the roulette wheels. I saw him at the Lincoln Tavern. He had charge of the wheels.

I can point out the defendant Johnson (indicating defendant Johnson).

I can point out the defendant Jack Sommers (indicating defendant Jack Sommers).

Mr. Thompson: We admit he knows who these men are.

Cross-Examination by Mr. Thompson.

I was the checkroom boy out at Lincoln Tavern in the daytime. I started about twelve and worked until eight o'clock. I couldn't say exactly how long I worked at the Lincoln Tavern. I never checked coats there. I was cashier at the bar and restaurant. I was only cashier there a short time in the daytime from twelve o'clock through the afternoon until eight o'clock. I sat at the register and rang up the cash from the bar and restaurant and made change for customers.

The help bought their lunch in the dining room and 429 I rang up their checks. They had gambling there in the afternoon, shooting craps. I saw customers shooting craps at the Lincoln Tavern in the afternoon. I didn't know the names of the people. The players ate lunch besides the crap dealers at Lincoln Tavern. I can't recall any time now of any individual that I saw shooting craps.

We served sandwiches or steak or whatever you want. Dorothy Powers worked there as a waitress. She worked during the noon hour. I don't know exactly where she lives. I know it isn't far from the place. I think she lives around Montrose and California, around that neighborhood.

I'm talking about 1935. It may have been in '36. I wasn't working there in 1930. I would say it was '36. I think it was in the spring of the year I started to work there, about April. Just worked there one month or a shorter time. I think it was only a few weeks when we moved back into the city. I was only there a short time, maybe two months, May or June, something like that. It might have been April. I know I was only cashier a short time, and that is the only thing I did there, was cashiering. It was in '36 or '37, might have been '38, I can't remember.

Somewhere between '34 and '38, and somewhere between April and June. That is about as close as I can come to it.

I believe Mr. Wait was in charge of the wheels at that time. Mr. Wait had charge of the wheels, that is, he would be standing in the center when I would see him. The wheels stretch out over a space. He would stand inside of them or would be sitting down in between the wheels. They had four or five wheels. It all depends on how much business there was. Mr. Hartigan was another one of my bosses out there. He had been there in the afternoon. I have seen him there. He would be inside of the gambling room bossing the men at the crap tables. He had charge of the dealers. They have two dealers at a crap table, one box man and one stick man.

430 I wouldn't say that Mr. Wait and Mr. Hartigan would come there to work at noon. They might work nights at times. I noticed everything that was going around, you know, and in talking to different people. I didn't talk to anyone about this case before I went on the stand. Nobody had the slightest idea of what I was going to say when I went on the stand.

ABRAHAM NECHIN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Abraham Nechin. I am a contractor. We make structural steel and ornamental iron. I have been engaged in that business about twenty-five years.

I have known William R. Johnson for twenty-five to thirty years. I had occasion to install iron work at the Bon-Air Country Club on two or three occasions, about three or three and a half years ago, I don't know exactly. I think in '37, and then a year later. We did some work in the spring of either '38 or '39, I am not sure as to the dates. We supplied some heavy girders for remodeling the dining room and for extensions to the locker rooms.

I met an old friend, Mr. Goldberg, downtown, who told me that the Bon-Air was doing some work. That was just a few days before we got the first order in '37. I went out to the Bon-Air Country Club. I saw Mr. Goldberg.

I talked with defendant Johnson and I talked with a little fellow, I can't remember his name. That was the afternoon of one day early in '37. There were eight or ten men there besides mechanics, around. Goldberg, and a little fellow there who acted as foreman, and one fellow who was fussing around with the theatrical end of it. I can't remember his name, either. There was a steam fitting contractor and a lumber salesman. I don't know 431 his name. I know that lumber salesman very well but I don't remember his name. I saw Johnson there. We had not seen each other for over twenty years. He was glad to see me and I was glad to see him. It was not a social visit. He asked what I was doing out there and I told him I came out to get what work I could. I don't know exactly what he said but it was in the nature of the fact that there was work to be done there. I don't know the words that took place.

He was worried about a bay window looking over a golf course and he said, "Nadherny is designing a bay window there". I said, "Well if Nadherny is designing a bay window, I can't do anything about it until I talk to Nadherny".

We subsequently installed material in the Bon-Air building. We charged several thousand dollars. I don't know the exact amount. I was paid by Mr. Wait. We got some money from Mr. Nadherny. We got some money from the Lightning Construction Company.

Government's Exhibit E-99 is a sheet out of my books. That is a part of the permanent records of my company that is kept in the usual ordinary course of our business. It is customary in our business to keep such records and the entries recorded thereon were made at or about the time the transactions occurred.

Mr. Miller: We offer GOVERNMENT'S EXHIBIT E-99 in evidence.

Cross Examination by Mr. Thompson.

Bob Goldberg of the Liberty Electric Company did not tell me he was building Bon-Air. There were a dozen people out there.

I know William R. Skidmore. He was not there that day. He was there while we were doing the work. I did not talk to him about the job. I did not discuss con-

struction work with him. I saw him around there twice while I was there.

432 I did want to know something about the Lightning Construction Company, which was hiring me to do this job. I did extend credit to the Lightning Construction Company and I was paid by them for that job that was done for them. I had never met the little fellow before that I saw there. I think his name was Roy. I am not sure whether it was Love or not. I know Roy is right. He was a little fellow that leaned over to one side as though he had a defect in his physical make-up; a little bit large head for his size. He was construction foreman there.

Mr. Nadherny finally gave me my order for that job. We installed the work and got paid for it in several installments. Mr. Wait gave me the first payment, the checks from Lightning came in the mail, my brother went out and made a collection. I didn't know who paid me. And Mr. Nadherny mailed us a couple of checks.

I cannot tell by looking at Exhibit E-99 which are cash items and which are check items. We billed them on the 21st of November for \$2090.00, and I got that thousand that I know. That is in 1938. That was part of the work done in 1938. That thousand dollars was paid on December 24th. That was before the work had all been completed. I got the thousand dollars on the premises. The place was not operating at the time. They were doing construction work for the succeeding season. This was paid to me in cash by somebody there in the office.

The next item is January 7th. I wouldn't know if that was paid in cash or check. I didn't make this next collection. I made collections after the first one. I can't tell you exactly. I believe, however, I made the March collection. It was the 27th, four hundred dollars. There were several individual invoices. We show those entries all as one although the invoicing was all done on one day, the 30th of December. We billed for these items on the 30th of December. The bookkeeper just spread the amount so that he could balance the items there. They were paid on the 7th of January. They were all paid in one lump sum.

433 I don't know when the red bracket and the cross were put there. I don't know who put it there. I don't know who put that circle and the red marks there. I did not make any of these entries on this sheet. The bookkeeper takes

his invoices and enters them into the general ledger and then from the general ledger he distributes to the individual accounts. I have checked these entries with the original invoices from time to time in our regular checking over the account.

I do spot checking of our ledgers once in a while. I do not remember whether I checked this account or not. There was a credit for merchandise returned. I don't know whether it is on that sheet or not. It would be indicated as a credit. There are no credits on this sheet. The initial on the top is page eight of receivables.

Mr. Thompson: We object to the document as being cumulative of the witness' testimony; also cumulative as to other exhibits already in evidence, a duplication of some of them in amount, and covers 1938 and 1939 expenditures; furthermore immaterial to any issue in this case.

The Court: Overruled. It may be received.

(Which said document so offered was received in evidence as GOVERNMENT'S EXHIBIT E-99.)

WILLIAM J. COOTE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is William J. Coote. I live at Thirteenth and Michigan. I was employed at the Lincoln Tavern. It was the latter part of '37. I was employed under the name of a shill. I used to be a regular player there. I was out there every night the nights they played Keno and stud poker. Finally I thought I would have to go to work. So I made application.

434 I think I first spoke to Mr. Johnson. He said that Mr. Hartigan would attend to that. Mr. Hartigan put me to work on the roulette wheel with Boone Kelly.

I have worked at the Lincoln Tavern. I worked at the Harlem Stables, Tessville, Kedzie and Lawrence. By Tessville I mean the place we were at when they got closed up a year ago.

I always worked on the roulette wheels. Once in a while on the 21 game, but very seldom. I was mostly at the wheel.

I am acquainted with the defendant Ed Wait. He was out overseeing the wheels, I forget what house it was in; for

a short time I worked under him. Couldn't exactly say when. It was only for a short time.

I worked at the Horse-Shoe. I couldn't say exactly how long, a short time. We moved out, I think, to the Lincoln Tavern. I know we left there and went out to one of those other houses. They used to have a bus running out from Kedzie and Lawrence to the Keno game. There was a signal inside of the Horse-Shoe about that bus system. There was flashlights over the front door. When they flashed it was time for the bus to go for the Keno. The flashlight was right over the door inside of the place.

THOMAS FAHY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Thomas Fahy. I live at 2249 Eastwood. I was employed at the Lincoln Tavern about three and a half years ago. Mr. Sommers hired me. He was at the Lincoln Tavern when he hired me. I worked as a shill at the Lincoln Tavern. I worked there in the day and night. When

I was working in the daytime Mr. Sommers was my boss. Mr. Hartigan was my boss in the night time. I

worked at the Lincoln Tavern about six months. At the end of the six months I went to the Horse-Shoe. I was recommended to go there. I was recommended for the Horse-Shoe by Mr. Sommers. I worked at the Horse-Shoe two months. After two months I went back to the Lincoln Tavern.

When I went back there at the Lincoln Tavern I did not have exactly a boss. Mr. Sullivan was just the floor boss. I broke in as a dealer at the Lincoln Tavern. I dealt in the daytime and night time I was a crap dealer. That is a dice game.

I believe it was about four or five months that I stayed at the Lincoln Tavern on that occasion. I went back to the Horse-Shoe. Mr. Sommers was my boss at the Horse-Shoe when I went back there. I went back there to work there at the night time. Mr. Hartigan was the boss. I just don't remember what year it was. It was about '37 I believe.

I worked at the Harlem Stables. That was after we got closed at the Horse-Shoe. I just can't tell you what time of

the year it was. It was right after we closed there. I went over to the Harlem Stables. It was right after we closed the last time. I have been referring to the Horse-Shoe. I worked at the Harlem Stables four or five months. I just don't recall how long it was. Mr. Sommers was my boss at the Harlem Stables. I worked as a dealer.

I went out to 119th Street when I left the Harlem Stables. That is a gambling house. We were closed. I was recommended to go out there for a job. Mr. Sommers and Mr. Hartigan recommended me. There wasn't any work at the other place. I shilled at 119th Street. I worked extra at the Casino, just on Saturdays. That was while I was working at the Horse-Shoe I worked there, too. That was a few years back when I was working at the Casino. I just can't say just when that was. Garrett Mead was my boss at the Casino.

I worked at the Dev-Lin. Mr. Sommers was my boss. 436 Mr. Hartigan was my boss when I worked nights. I worked at the D. and D. one day. I went over there in the evening. They needed me. I went to work. I was recommended to go there. They needed a dealer. Mr. Sommers recommended me. I dealt craps there one night.

I met the defendant William P. Kelly. He was my boss there that night. I have seen him around at different places. I saw him at the Lincoln Tavern.

I know Ed Wait very well. He was a wheel boss or something at Lincoln Tavern. That was while I was working there.

I know Reginald Mackay to see him. I do not know him very well. I have seen him at the Lincoln Tavern. I saw him at the Casino once when I was visiting there. He was not working there when I was there. He never was there when I worked that I recall.

HARVEY HARVAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Harvey Harvan. I live at 4710 North Avers. I worked at a place known as the Casino Club. I worked at a place known as the Mayfair about December 1939. I never worked at the Crawford Club.

I know a man named Moody. I worked in a place where he worked. That was at the Mayfair Club. I believe I worked there in the summer of 1938. I was outside man, bringing in the customers. I would be outside, anywhere, between a mile of the club. I would approach people.

The Mayfair Club was located at 4837 Elston when I was working there in 1938. It was always at that address. I was sent there by the alderman to get my job at the 437 Mayfair. When I went over there to the Mayfair I was sent out to the Club Gar-Mea, 1934. That was located at Milwaukee and Irving. I do not know if it was ever located at any other place.

When I went over to this Club Gar-Mea, I talked to Mead. I don't know his first name. I worked there about three months. My type of work was that of a shill. When I left that employment I was outside man at the Mayfair.

I worked at the Harlem Stables. It was around July, 1939. I had been shilling at the Harlem Stables. Moody sent me up there. I don't know his first name. When Moody sent me over there he worked at the Mayfair Club. He sent me out to see Bill Kelly at the Harlem Stables. I talked to Kelly. About three or four days later he put me on as a shill. I don't know what he was doing there. He just put me on. I didn't see him doing anything around the Harlem Stables.

I did move equipment from the Club Casino to the Mayfair Club. This club is located at Milwaukee and Elston. We moved writing tables and chairs from the Casino to the Mayfair. We just put them inside when we got them over to the Mayfair. We did that at Moody's direction.

When I was working at the Mayfair Club it was a bookie joint, nothing else. I imagine the premises was the size of this room. There were horse race sheets on the wall. I worked as an outside man at this Mayfair Club from December until about around July 1939 and 1940. William P. Kelly was my boss when I was working at the Harlem Stables.

Cross-Examination by Mr. Thompson.

I first worked in a gambling house in 1934. That is when the alderman sent me to get the job. I had not worked in one before that. I was out of employment and I asked my alderman for a job and he sent me over to this Mayfair Club. He told me to see Mead. Mead was around the club for some time.

438 Moody was not in the same club. He was in the May-fair Club. Mead worked at the Club Gar-Mea. It was located at Irving Park and Milwaukee. That is the one the alderman sent me to.

Redirect Examination by Mr. Hurley.

I don't know whether this club Gar-Mea was later known as the Casino. I don't know where the Casino was located.

JOHN P. LANG, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 512 Melrose Street. I did, in the spring of 1939, work at a place known as the Horse-Shoe. It was a gambling place. I applied for the job at the Horse-Shoe. I wrote a letter to Mr. William R. Johnson,, addressing it to 4721 Kedzie Avenue, which is the Horse-Shoe address, and two days after I mailed that letter I got a telephone call I should come down in the evening about between nine or ten and I will say at that time I was in need of money. I hadn't no work for over one full year and a married man with family. I had to do anything. So I went down—asked over the telephone first. I asked who shall I ask for and the voice said to ask for Jimmie. I said, "Jimmie who?" And, oh, just ask the doorman for Jimmie, and that was all. So I went down and asked the doorman for Jimmie.

That was at the Horse-Shoe, and turned around and Jimmie was standing right there. I found out that that was Jimmie Hartigan. Next day I started to work in the afternoon shift.

Jack Sommers was my manager at that time. The type of work I did was shilling. I worked eighteen days. That was in 1939. I was promised a job as a draftsman
439 starting with May 1st, 1939 and on the 13th of April I had to do that work and had to go there in order to have car fare and lunch money as soon as my job starts, so more or less it was a matter of kindness to give me that job.

I worked eighteen days and it started on the 13th of April, until the last day of April '39, and the first of May I went to my regular job, which did not materialize, although it was promised to me. Nothing came out of it. The

firm closed up, and so I was up against it again. I tried to get the job back but I couldn't.

I did not at any time work under this Jimmie Hartigan that I met there that night. He was working in the night. When I went out there the first night he asked me when I wanted to work, in the night or in the daytime. I said, "I am coming here and asking for a job, for work. I leave it up to you". Then he said, "Then you start tomorrow. Be here before one o'clock noon and start in the afternoon". He said, "See Jack Sommers". He said he would be there before one o'clock. Hartigan did not say what time he himself would be there.

Cross-Examination by Mr. Thompson.

Defendants' Exhibit J-4 for identification is the letter I wrote to Mr. Johnson. That letter was written on April 11th. I was asking Mr. Johnson to see if he could get me a job.

I have known Mr. Johnson for some ten years. I knew about his places. I haven't seen him gamble. Anyway I thought he might be able to get me a job at some gambling house. I didn't know any other address to address him. I remember I looked in the telephone book. I couldn't locate Mr. Johnson's address, so I thought I write it there and he will get it. I addressed it to this gambling house known as the Horse-Shoe Club, and then there was someone 440 called me on the phone a day or two after I wrote this letter. I made an appeal for a job because I had no food for my family and no car fare to get this job that I had in prospect three weeks later. This voice that called me on the phone told me to come down and see Jimmie and I went down and Mr. Hartigan was there to meet me. He talked to me a while. He told me to come the next day and start at noon about one o'clock, at Mr. Jack Sommers. I don't know that he sent a message or wrote it on an envelope that he had in his hand.

Mr. Thompson: Mark this document as Defendants' Exhibit J-5, for identification.

Mr. Thompson: Did Mr. Hartigan have this envelope in his hand when he interviewed you there at the Horse-Shoe Club that evening?

The Witness: I have not seen that. I did not carry that envelope to Mr. Jack Sommers. I didn't know anything about that message written on that envelope, out-

side of the envelope. This is a message from J. H., to Jack, to put me to work that afternoon at one o'clock. This envelope is the same one in which my letter went to Mr. Johnson, sent registered mail.

Mr. Sommers himself did not pay me for the work there at the Horse-Shoe. We had to go to the counter and get our money every day. I went to the cashier and got paid every day. I worked here starting at one, to seven. I am a draftsman by trade. After I worked there two or three weeks the draftsman job did not materialize. These men gave me work until the last day of April. Then I quit because the next day I was supposed to have the job as draftsman. I went there and it was closed up. There was no job. I tried for one full year to get another job and, believe it or not, I could not get it. I couldn't get it in my head that my age is against me. I know it now. I could not get any work for many months, so I tried to get my job back in the Horse-Shoe out of desperation. Please
441 understand that I am not demeaning this profession.

I didn't work there again. I couldn't get it back. I sent letters. I didn't go there personally. I sent letters like this one. They came back to me. I took that registered letter and put it in another envelope and sent it again registered to the same address. It came back again. I had to give it up. One day I went there personally and saw it was locked up, closed. Then I addressed Mr. Johnson again to the same address and the letter came back. That was this last spring, 1940. I didn't see Mr. Johnson after I wrote this letter. To tell you the truth, I looked for him, I waited for him, tried to see him every day. I did that other job there but I wanted to get out of that job, and ask for something better, so I waited for him every day. I certainly wanted to thank him for helping me get the job, but I didn't see him there in the afternoon because I realized, even though it was only eighteen days' work, it was a kind of a mercy job.

GEORGE LEBBIN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is George Lebbin. I live at 5101 North Clark Street. I was employed in the establishment known as the Horse-Shoe. I was employed there about three years ago. I worked there as a shill. I was out of work and I made inquiries around how to get a job there. I went to see a friend of mine and he told me to see Mr. Johnson. I went in with Mr. Johnson and he spoke to Mr. Sommers, and after about fifteen minutes Mr. Sommers came over and asked me if I knew how to shill. He told me to come back tomorrow night and he hired me. I came back the following night. Mr. Sommers was my boss there at 442 night. I worked there about six or nine months. I was not at the same address all the time. I worked at the Harlem Stables for about a week. Mr. Sommers was my boss out there. I worked at the Dev-Lin. Mr. Sommers was my boss there. I worked at the D. and D. Club. Mr. Kelly was my boss at the D. and D. Club.

I know James Hartigan. I have known him just while I worked at the Horse-Shoe. He was one of the bosses there so far as I know. I saw him at the Dev-Lin in the same capacity as at the Horse-Shoe.

I was paid every night in cash while working at these places. The other employees were paid at the same time I was by a little fellow by the name of Kimmel.

Mr. Sommers sent me to the D. and D. Club. He told me I might try to get on at the D. and D. Club. I was not working at that time. The Horse-Shoe had been closed and it happened I came over there to find out, so Mr. Sommers told me I might go over to the D. and D. Club. I don't remember who I spoke to at the D. and D. Club. He was a runner there. After I waited about twenty minutes he told me to come in tomorrow night and go to work.

Cross-Examination by Mr. Thompson.

Mr. John Horan, who is now deceased about two years this October, sent me to see Mr. Johnson about getting a job. He was a brother of Dennis Horan, who was an alderman at the time. I met Mr. Johnson outside of Kedzie

and Lawrence, the Horse-Shoe. I waited there until I saw him coming in, probably about ten thirty. He was alone at the time. He came in a car. I asked one of the boys who Mr. Johnson was. They pointed him out to me. When I saw him coming in I hailed him. I told him that Johnnie Horan had sent me over, and he talked with me pleasantly. I guess he was glad to see any friend of Johnnie Horan's.

He talked to me and I told him I needed a 443 job because I had not done any work for quite a while.

He said, "Well, I will see what we can do. Come upstairs." He took me upstairs. He didn't introduce me to anybody. He walked up to Mr. Sommers. I stood back at the door. I didn't want to be too forward and walk right in. He talked with Mr. Sommers for a while and after about fifteen minutes Mr. Sommers came over and asked me if I knew how to shill, and report tomorrow night. I told him that I thought it was no more than just playing the game. I knew how to play the crap game.

I shilled there about a year. About two and a half years at the places that Mr. Sommers was operating. When Mr. Sommers would get one place closed up on him he would move out to another. He would operate the Horse-Shoe until they closed that on him. Then he would go out to the Dev-Lin and operate that. I didn't work at the House of Niles. That was before my time. I played in all these places shilling, about two and a half years all told. The same customers played at the table with me. They knew I was a shill. There wasn't anything secret about my playing as a shill for the house. These shills are used to fill in games so as to complete a game, to start games. Customers come in there, and if there are not enough to make a poker hand, then a poker shill sits in. If there isn't enough to make a crap table of people, they fill in with a few shills. If the customers come and take the places of these shills the shills back away. Everybody understands that in the gambling house.

Redirect Examination by Mr. Plunkett.

I think it was a Ford that Mr. Johnson came in the night he drove up here. I never looked. I don't know what he drives.

444 EDWARD A. LURIA, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Edward A. Luria. I live at 22 West Van Buren Street. I worked at a place called the D. & D. in '37. I started there in the spring of the year. I got my job from William Kelly. My type of work was that of a shill until they closed. That was about three months. I went back to work there when they opened up. I guess there was an interval of about five months. I went back to work at the D. & D., working for Mr. Kelly. I worked there for about two months as a shill. I worked at the Harlem Stables last summer in 1939 in the same capacity, as a shill. I was working for the same Mr. Kelly that I worked for at the D. & D. I worked at Kedzie and Lawrence, at the Horse Shoe. That was Kelly's place, too. He was my boss. That is the same Kelly that I worked for at the D. & D. I worked there about two weeks and then I went to the Lincoln Tavern. Mr. Kelly was my boss there, the same Mr. Kelly that was at the D. & D. I got my job at the Lincoln Tavern from Mr. Kelly in '37. I always went to him. He gave me my job. I worked for him at the Lincoln Tavern. We moved some tables and chairs once from Kedzie & Lawrence into a truck. I did not know where the truck went. I came to work and all the help was moving this equipment. I pitched in and helped. That was in '37. When that equipment was moved out I changed my place of employment. I went from the Horse Shoe to the Lincoln Tavern. I do not know whether that equipment was moved from the Horse Shoe to the Lincoln Tavern.

Cross-Examination by Mr. Thompson.

445 The first place I worked in a gambling house was the D. & D. The first time I went there I was a shill. I knew what a shill was when I went there. I learned that occupation from patronizing gambling houses. I knew what one was. I have been patronizing gambling houses all my life. My business is that of a licensed pharmacist,

but I have done shilling. I have run a drug store in Chicago. I did not sell anything else besides drugs. When I worked for Kelly the first time it was in '37. He was the boss of the D. & D. I imagine he was the proprietor of the place. He ran the place. He did not greet guests at the door. He helped out at the tables if it was busy. He gave orders and told us what to do, all the employees, if it was necessary, in regards to work, stepped into the various games when they happened to be needed. Occasionally he would shift us from one game to another, but that was under subordinates of his—there were assistant managers—I would not know their names.

When Mr. Kelly's place was closed up I would not go anywhere until they re-opened. I was out of employment until Mr. Kelly re-opened the D. & D. I could not say when it closed. I do not remember the exact dates. I was out of work three months the first time, approximately from about May until about August. Then the place closed and stayed closed about seven or eight months. I did not work anywhere in that seven or eight months. I lived at 22 West Van Buren Street during that period. When the D. & D. opened again in the spring of '38 I worked there about three months. Mr. Kelly appeared to continue to be the proprietor, and then they closed again. I was out of employment. I got my next employment at the D. & D. when they opened again in January, '39. I worked there until they closed about May. Mr. Kelly appeared to be the proprietor of the D. & D. The cashier paid me—
446 he hired me each time and fixed the wages. I have not been employed since.

When the D. & D. closed I was told to go to the Harlem Stables, the last time, in May, 1939. Mr. Kelly was boss at the Harlem Stables. There was lots of straw bosses around there. Everybody is a shill's boss. A shill takes orders from every one—anything that is needed, a shill, anyone tells him what to do and he does it. That is the way I characterize Mr. Kelly, as a boss out at the Harlem Stables—because he bosses me as a shill. Mr. Kelly did the hiring at the Harlem Stables. I mean he gave me my job. There was someone else there in charge—he was my boss, that is all I know of the place. I did not see any of the rest of the defendants out there. I never saw one of them at the Harlem Stables, and I don't see any one in this courtroom that I saw at the Harlem Stables any time

I was out there, excepting Mr. Kelly. That was in the summer of 1939, about May, about three or four months, all during the summer of '39. Following that I didn't work nowhere. I have not worked since. I left town. I quit at the D. & D. in May, when they closed down completely. The total shutdown was in August or September of '39. I worked out at the Lincoln Tavern about three or four years ago. I worked for Mr. Kelly. That was not in between these operations at the D. & D. Club. These are all times they were open and run together, these periods of time run into each other. These periods of time run between the shutdowns. I worked at the Lincoln Tavern three or four weeks. Mr. Kelly was my boss there. There are other bosses in these places. I did not see any of these defendants at Lincoln Tavern when I was working out there except Mr. Kelly—none of them. I worked at the Horse Shoe. As far as I know, Mr. Kelly is proprietor there. He was the fellow that hired—he was the boss. I never saw any of the rest of these defendants around there—nobody but Mr. Kelly.

447 W. J. MASURY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is W. J. Masury. I live at 1215 North Dearborn Street. I was employed at the Horse Shoe, which is located at Kedzie Avenue. I was employed there last year, from February to September. Mr. Hartigan employed me. I went to see Mr. Kelly at the D. & D., and he sent me to see Mr. Hartigan, and he put me to work. I had a letter from Mr. Bauler to the D. & D., to Mr. Johnson, I believe. I gave the letter to Mr. Hartigan. I never met the defendant, William R. Johnson—I just know him casually. I worked at the Horse Shoe seven months. I worked from eight in the evening until three in the morning. Mr. Barnes was my boss there. I saw Mr. Hartigan there after he gave me my job. I believe he was employed in the capacity of night manager. I do not know who the day manager was.

Cross-Examination by Mr. Thompson.

Mr. Bauler wrote this letter. Paddy Bauler, the Alderman, wrote this letter. It was previous to going to work. I went to work February 15, 1939. Then I went to work at the Horse Shoe and worked seven months from February 15, 1939, until September, when they closed up. I have been working since, but not at that. I was working, tending bar. They have no book there. I was shilling at the crap table at the Horse Shoe. I worked seven months shilling, between there and the Dev-Lin. I left there in May and was there until September. I started on February 15th at the Horse Shoe. I was there until May. We went out to the Dev-Lin until September. Then we were all 448 through—they closed up out there. I have been unemployed until I went tending bar for four weeks. The Horse Shoe did not open up again in September in Chicago. I do not recollect the name of the man who paid me at the Horse Shoe. The same man paid me all the time. He was a cashier. Mr. Hartigan was my boss at the Horse Shoe. I have seen Mr. Sommers there—I couldn't say in what capacity. I saw him every day or so. I do not know what Mr. Hartigan was doing. He just was around there as a manager, overlooking things, I imagine—just standing around overlooking the details. He was there every night. I can't recall who was in charge of the Dev-Lin. Mr. Sommers was around there, it seems to me, but Mr. Hartigan was not there much. I can't say that Mr. Sommers was out at the Dev-Lin all the time I was there. I was working—I wasn't watching who was doing all the other things. I was pretty well occupied with my work. I might have seen Mr. Sommers around the Dev-Lin off and on, but I didn't see him there regularly. I could not say positively that he wasn't. Mr. Hartigan was not there.

MRS. FLORENCE BULGER called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Mrs. Florence Bulger. I live at 5200 Blackstone. I am in the office supply business. I know William R. Johnson about six years. I did have a business transaction with him—I rented him an apartment from 1934 to

1939. It was located at 5000 East End Avenue. The rental paid ranged from \$165 to \$200. I have seen Govern-
449 ment's Exhibit E-101, for identification before. It is my memo of the rentals paid to me by Mr. Johnson. I remember definitely that he paid me \$200 per month last year—I would say \$185, the year before. I would say approximately \$165 from May, 1936 to May, 1938. I would say from May, 1934 to May, 1936, between \$165 and \$185. Mr. Johnson paid me the rental for these premises. It was a furnished five room apartment that I rented.

HARRY MEYER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Harry Meyer. I live at 1116 South Richmond. I worked in the Horse Shoe, gambling house. I was a shill—about four or five months in that place. That was in 1938. I think Jack Sommers was my boss there. I was out of work and went in there and asked for a job. I asked Mr. Johnson and he sent me to Mr. Sommers. He said see Sommers and I went to Mr. Sommers. I asked Sommers if he had a place for me to go to work. I was told to come back three days later, and I did, and went to work.

I worked at the D. & D. I went from the Horse Shoe over there after they were closed. They closed the Horse Shoe and sent me from the Horse Shoe to the D. & D. I am not positive, but I think it was Mr. Sommers or Mr. Barr who sent me. When I went to the D. & D. a runner put me to work over there. I saw the boys there that worked at the Horse Shoe. I worked at the D. & D. maybe four or five months, as a shill. After they closed I went to the Dev-Lin. They were closed at the Horse Shoe and I went over there. I went there myself, maybe three weeks later.
450 I talked to McGrath at the Dev-Lin. He put me to work there. I told him that I worked at the Dearborn and Division, at night, and he says O. K. He put me to work over there. I was paid \$4 a night at these various places, paid every night. The pay man paid me. I worked at the Dev-Lin until they closed. I was in the Horse Shoe quite a few years before I went over there looking for a job.

Johnson happened to come up there, and I asked if that was him, and asked for a job—if he could put me to work. I did not know Sommers before that time. I saw him there that first night, before I talked to him. I did not notice him that night when I went up and talked to Johnson.

Cross-Examination by Mr. Thompson.

No one told me that Johnson was the man to see. I heard some one say that you might get a job up there, so I went over there. Nobody told me to see if I could find Bill Johnson to see if he could get me a job. I knew, myself, that I would have to ask somebody over there. I do not know Mr. Johnson—I did not know him when I went up there—I just heard the name—I inquired for him. He wasn't there. He came in later. I had to wait a couple of hours for him to come in. He came in about ten o'clock. I asked him if I could go to work there. He said, "You have to see Sommers". I talked to him. He told me to come back in three days. I came back and got the job. I was not working at that time. I had been out of work a year. I have a family. Off and on I was selling advertising, signs to stores. I was looking for employment at this time and I went in to find out if I could get a job at this gambling house. I had not worked at a gambling house before. I had gambled before, just in a small way. I did know how to gamble. I was shilling, mostly on the dice table. I did not shoot craps very
451 much before. I played Keno in several places in Chicago before that. I never worked in a gambling house anywhere else besides Chicago. I did not get this job from an alderman or ward committeeman. No one sent me.

JOHN A. OGREN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is John A. Ogren. I live at 7536 Evans Avenue. I was first employed in a gambling house in 1930, at the Horse Shoe at Kedzie and Lawrence. My duties when I was first employed there was writing sheet. I have also been employed at the Casino at Irving Park and Cicero. I was cashier on the horses at the Casino. I have been em-

ployed there for the last three years, until last October. I worked for Mr. Mackay at the Casino.

Q. Was he boss all the time that you worked there?

Mr. Thompson: We object to counsel calling for the conclusion of the witness. He says he worked for Mr. Mackay, which is an appropriate answer.

The Court: I don't know which carries the most conclusion. Objection overruled.

The Witness: I don't remember whether he was always my boss at the Casino. As far as I know he was. I was mostly employed as a cashier in the Casino. I have written sheet there. My duties were just paying the bets as they came in, tickets, winning tickets—I kept no records outside of checking my cash in and out. I had no records before me as I worked as a cashier. I had a sheet there, ticket number corresponding with the number on the sheet, and paid the ticket out. The sheet was brought up from 452 the sheet writer. The sheet had bets registered on it when it was brought to me, and the amount of money on the sheet. I made no other notations on the sheet other than totaling the amount of the pay-out. I wrote down on it the amount I paid to each winning bet. At the end of the day, in order to check out, you have to total the sheets, the ins and outs, and when you cashed out that was all. I put a rubber band around mine and they were put on a table there. I would turn the money back to the head cashier where I received it. There was a safe there. I have helped put the money in the safe—that is in the box in the safe. I had the original sheet that I used as a cashier. The carbon copy was laying there on a table. I never had anything to do with the carbon copy. I haven't the least idea what became of them. I had made errors as cashier at the Casino. They were called to my attention by the fellow who had charge of the book there. They were called to my attention the following day. I never inquired how the fellow in charge of the book knew I had made an error. He knew I had made an error, and how he knew I do not know.

I have seen Reg Mackay in other gambling houses—I think at the House of Niles, about three years ago, I believe. I was working there at the time. He was my boss. I don't remember seeing him any place else except the House of Niles.

I don't know the defendant, Ed Wait—I have seen him. I do not know just where I saw him. I had been employed

at 4020 Club. That is some eight or nine years ago. I was employed at 3946 School Street for a very short time, if ever. I think I was there about a week. I don't know who my boss was on School Street—I think Mackay. I don't remember the date that I was employed on School Street—some two years ago. I don't know how we happened to come there. It was a big room, looked like it might have been a dance hall. It was a horse book 453 while I was working there. I was a cashier. There were two or three others. I had never been a head cashier any place over a day or so—that was at the Casino. My duties as head cashier were practically the same as any other, only that you gave the other cashiers their bank. Otherwise I don't see any difference. I didn't have any record that I made as head cashier, no more than keeping track of the money that I gave to the other cashiers. I put it on a piece of paper. I would write Jim, \$100, John \$100, and so on, for the two or three cashiers. If anything was paid out I would make a record of that. I never got the sheets the other cashiers were working on, no more than to check them in, ins and outs, money they had either lost or won—that is from each cashier. I would balance these figures. I wrote them on a piece of paper that goes with the sheets. Then it left me. The man in charge of the book looks after that part of it. The other cashiers turn their money over to me. I counted all the money. I put it in a tin box. When the day was over I put it in the safe. There was a loud speaker that announced the races at places where I worked. Sometimes I thought I knew the voice that came over the loud speaker—other times I didn't. It was not the same voice. I could probably name one voice that I thought I heard. I think it was "Skinny" Moss. That is the name I knew him by. I had talked with him on a half a dozen occasions. I thought I recognized the voice I heard from "Skinny" Moss as being the voice I heard over the loud speaker. I was working at the Casino when I heard this voice over the loud speaker. I do not know where "Skinny" Moss was when his voice was coming over the speaker.

I see Reggie Mackay that I worked for at the Casino in the courtroom (indicating the defendant Mackay).

I was employed at the Harlem Stables last summer, 1939.

Mr. Hartigan, the defendant, was my boss out there. 454 I was working at the Harlem Stables last summer, about four months. He was my boss all of the time. I

was working in the day time, writing sheet. I worked at the House of Niles about two years ago, about three months. Mr. Mackay was my boss at the House of Niles. I was cashier.

I worked at the Casino before I worked at the House of Niles, and prior to the time I worked at the Casino I had not been working for about three or four months. When the Casino closed some of the boys on the corner said they were going up to the House of Niles, so I went out there. I saw Mackay there. I asked for a job. He says he will see. I got a job. It may have been the next day. I have never done any other work except write sheets and be a cashier. I know what the Morning Line is—it is the approximate prices—it has no relation to my work. I can not name any other places at which I was employed. As cashier I just kept the one little sheet. That sheet included the other sheets from the other cashiers, that balanced the box, as you call it. That sheet was kept in duplicate. The originals went with the money box, I believe. The duplicate went with the sheets. We took the box and put it in the safe. I could not say what became of the duplicate sheets—I do not know. The duplicate sheet that I kept as head cashier was put with the duplicate sheet of the sheet writer. A rubber band was put around it and put on the table there. At one time I remember leaving these sheets with the doorman at the door. Leaving them with the doorman was not a regular custom—just this particular time I carried them there—whether it was every day I don't know. I gave them to the doorman because a fellow asked me to take them to him as I was going home—maybe he was taking them up, I don't know. Larry Bovin asked me to do that, the fellow that looked after the book. This occurred at the Casino.

455 No cross-examination.

(Witness excused.)

WILLIAM F. ROWLETT, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is William F. Rowlett. I live at 4544 Hazel Avenue. I have been employed in gambling houses in the City of Chicago. I was first employed in '26 or '27. I have not been regularly employed since then. I am not sure that I was employed in a gambling house about 1935. I have worked at the Harlem Stables. The last time I worked there was in '39. Pete Riley was my boss at the Harlem Stables. I was rolling the roulette wheel there. I do not know how long I worked there. I know I made \$326 there. I worked there twice. I have a Social Security number—341,109,944. That is my number. I worked at the Harlem Stables in the night time. Ed Hanley was in charge of the roulette wheel out there. I know the defendant, E. H. Wait, for fifteen years. I have worked under him at the Villa Moderne. The last time I worked for him was in '39—the Villa Moderne on Skokie Valley Road, about thirty miles from here, in the town of Highland Park, near Dundee Road. The Villa Moderne is an ordinary size cafe—seats, I guess, 500 people. I rolled the wheel out there—I think there were five or six on the second floor. There is a cafe on the ground floor connected by inside stairway. There was a hazard dice game in the place while I was working there. It is played with three dice dropping through a cup. Hazard and roulette were the only two games played. I worked there the summer of 1939 and 1938.

456 I worked for Ed Wait at the Horse Shoe at Kedzie and Lawrence. He had charge of the wheels there. That is back several years—I do not know the exact number of years. I worked at the Horse Shoe just a few days only.

I worked at the Lincoln Tavern. I don't know whether Wait was the boss there or not. I worked at the Lincoln Tavern in '35 or '36 at the roulette wheel. I am not sure whether Wait was there. I was not working there very long. I cannot name any other place where I worked for Ed Wait.

I worked at the Dev-Lin, just between Chicago and Lin-

colnwood. I worked the roulette wheels there. William or Pete Kelly had charge of the wheels at that place.

I do not know that Ed Wait drew a salary while I was working at the Villa Moderne. I suppose he did. He would count the salary for the dealers all out in fives. I have seen him pay salaries out there. He has paid me. He put it in piles and told us to come and get it and we would go and get it. There was money left that was not paid to one of the employees.

I am acquainted with the defendant Hartigan. I have known him for five years. He worked at the Lincoln Tavern where I worked—no other place.

I am acquainted with the defendant Sommers. He was at the Kedzie and Lawrence, but he was not active when I was there.

I am acquainted with the defendant Flanagan. Two or three times I worked at 4020 Ogden. I was employed at the Southland Club. I worked for Creighton at the Southland Club. I did not work there very long. It must have been in '34 or '35 that I worked there. I worked at the D. & D. Club twice. Kelly was boss when I was working on the roulette wheels there. A fellow by the name of Fishman was in charge of the wheels.

I worked extra the first part of the season at the Villa Moderne. I worked part time at the D. & D. and part 457 time at the Villa Moderne. I asked Creighton for the Villa Moderne job. I worked different days of the week at each place. I did not work very long at the D. & D. Saturday and Sunday I would go out to the Villa Moderne. When I stopped work at the D. & D. I worked at the Villa Moderne all week long. I worked at night. The place was not open in the afternoon. I never did work at the Bon Air.

Cross-Examination by Mr. Hess.

My name is Rowlett. I guess it was in Cicero about '24 that I first worked on roulette wheels. I am a little hard of hearing. That has been my profession for a good many years all over the country—Miami, Palm Beach, Hot Springs, Saratoga and various other places of that type, wherever I think I can get a job where gambling is going on I take it. Generally I work in the South in the winter and drift to the North in the summer. When I was working around Chicago in the last few years I was getting

about \$10. a day at these various places I testified I was at. If I worked overtime I got \$2.00 an hour extra. I always got my pay. When I worked at the Horse Shoe I paid my Social Security. I was given a report of how much that was. That piece of paper that I referred to when the Government's attorney interrogated me is the amount of Social Security that was paid by me or on my behalf while I was working for the Harlem Stables and for Villa Moderne.

I worked at the Villa Moderne part of the summer of '38 and the summer of '39. I am sure I saw Mr. Wait there both times. I would work two or three months each summer. I was not in charge of the roulette wheels. Wait was boss of the roulette wheels. Boone Kelly was boss of the roulette wheels there part of the time. I have known him many years. He is a well-known gambler. I met him in Chicago. He was one of my roulette bosses. Fishman was my roulette boss at the D. & D. and Ed Hanley at the 458 Stables; Cliff Dewey at the Southland Club. I worked under George McRoberts at the Southern Club, St. Giles, on Sheridan Road. I worked in Cicero, '24 and '25. I did not work there in the last four or five years. I worked in Miami, Florida, in '25, rolling the wheel for Eddie Fritz, and they closed after thirty-one days, and I drifted North. I had a part time job at the D. & D. It was because I had a part time job that I would drift over to some other place and try to make my full time by working in another club. That is why I worked in these various places in the fashion I did. In order to get one of these other jobs here at the Villa Moderne I would inquire whether another place was running. I would do part time there and part time somewhere else. I was working steady at the Harlem for only two weeks. In the past two years I had part time jobs more than I had regular jobs. I never worked at Reno, Nevada, nor California. I worked in New Orleans. Mr. Wait was the main boss at the Villa Moderne. He owned the whole thing. The roulette boss was Boone Kelly. There has been several months since I have seen Mr. Wait to speak to him. It was the early part of this summer—at the Bon Air Country Club. I went out to the Bon Air Country Club to see him about two weeks ago. I did not see him.

Q. You did not see Wait, but you were told when you inquired for Wait about two weeks ago at the Bon-Air Country Club that Mr. Wait couldn't see you?

A. That was something like the conversation.

I guess it was about a week before this case went to trial. I was paid every night at the Villa Moderne—different numbers of men were employed there. Wait would pay us. The money was laid out at the wheel that I said was laid out for us. The money would be in separate piles. Sometimes he would give me a \$10. bill, and sometimes twelve, when I did a little better out there. The money would be piled in separate piles. The porter would be the 459 only one that would get \$4.00. The rest of us got the same. A ten dollar bill and two ones would be what I would call a pile. That was the pile that he told me to come and get. That is what I called my salary pile. It was never paid in silver.

WILLIAM A. SCHMIDT, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is William A. Schmidt. I live at 5627 North Miltimore Avenue. I worked for Roy Love. I first met him about a year and a half ago at the Bon Air Country Club out near Wheeling. My brother-in-law, Melvin Koop, introduced him to me. As a result of that talk I went to work at the Bon Air. I first started to put on an addition. I happened to be a bricklayer, brickwork and cement work. I worked there until they opened. The work was completed in the spring of '38. I imagine about fifteen or twenty were working in the crew with me. Love was supervising the job. Roy Love paid me in the form of cash every week. After that I went to work at Mr. Johnson's Sunny Acres farm out at Lombard. I went out there after I got through at the Bon Air. I guess it was the following week—I guess six or seven of us went to Sunny Acres farm. We put up a building out there. It was a five-room home, one story. That was East of the Main house on the farm. It was wood. I worked out there until it was completed. We did other work there. It was cement and concrete work in the barn. I also worked on the driveway and the drains. I do not know of any other construction work that I have not told you about. Love was supervising the work. I

worked at the Bon Air when they started the last 460 addition. That was the following year, in the spring of 1939. I worked there until the last of August, '39. Love was there all the time. I worked at the Northland Club. I bricked up some window openings there. That was in '39. That was around the same time they put the addition on at the Bon Air Country Club. I worked at the Northland Club about the same time—about three or four days. There were three of us there. Love sent me over there. He gave me directions what to do. I know the Northland is located up on North Clark Street, in the neighborhood of 7515. There was nobody in the building at the time we went there—it was empty. I did some work at the Harlem Stables about July, 1939. I repaired the floor out there, put in a new floor in the washroom. I guess it was one evening that I worked there. Roy Love sent me there. There was four of us that went over. There was nothing going on there when I was there. That was about three o'clock in the morning. Roy Love was about five foot, something like that. He weighs, I should judge, about one hundred and thirty-five pounds, about forty years old, dark complected. He is droop-shouldered a little, thrown forward.

Mr. Thompson: No cross examination. Move to strike all the testimony as immaterial, tending in no way to prove any amount of taxable income to Mr. Johnson.

The Court: Denied.

EARL C. SMITH, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Earl C. Smith. I live at 2033 Sedgwick Street. I was employed at the Southland Club about March, 1939. I went there to see Mr. William P. Kelly 461 at the D. & D., and he sent me out to the Southland Club. I went out to the Southland and worked there a week and came back to see Mr. Kelly and asked him if I could go over to the D. & D. Club. I told him it was quite a ways to travel, and he said he would see what he could do about it, and I was out there the second week when I

got a notification to go to the D. & D. The notification was in a small envelope given to me by the floor manager down at the Southland Club. His first name was Solly. That is all I remember. I was a shill at the Southland. After I got this note in the envelope I took it back to Mr. Kelly and I went to work at the D. & D. I was shilling down there, too, until about June, 1939. I worked at the Harlem Stables. When the D. & D. was closed I was sent out there by Mr. Kelly, and saw Mr. Hartigan at the Harlem Stables. I told him that I worked at the D. & D. Club and if I could go to work, and I was put to work there right away, shilling. I talked to Kelly before I went to the Southland Club. He then said there wasn't any opening at the present time and he wanted to know if I would go out to the Southland Club, so I said I would, and I asked him if there would be an opening at the D. & D. he would call me back, and I waited a week or ten days and went in to see Mr. Kelly again.

Cross-Examination by Mr. Hess.

I went to the D. & D. for my first job, after I had seen the Ward Committeeman. He is the alderman, too. He sent me down to the D. & D. and told me to see Mr. Kelly, to tell him that Bauler sent me. There were no jobs there, so I went to the Southland, and after while I came back. I am unemployed now and have been for the past five months. I did some temporary work, painting and decorating, during the last five months, nothing else. I worked in a gambling house the first part of 1940. That was after 462 I worked at the Harlem Stables. That was a small book on Clark Street. I think I worked there about two months. That was not operated by Mr. Kelly or Mr. Hartigan. That was a bookie and a gambling joint of somebody else. I did not see any of these gentlemen that I see here hanging around that place. It was 2400 on Clark Street.

RAYMOND A. LEONARD, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Raymond A. Leonard. I live at 4424 North Maplewood. I was employed at the Casino Club in 1937 by Mr. Mackay. I had a brother who was working over there at that time and I was out of work at the time, and he asked me if I would care to come out and go to work, and he introduced me to Mr. Mackay and Mr. Mackay put me to work. I worked there approximately four or five months the first time I went out there, and then the Casino closed. I worked there once or twice, periods of time, a few months. After the Casino first closed I worked at the Stables. No one in particular sent me there. "I went out with—the boys left the Casino and went out to the Stables." I did not see anyone as I recall, in particular. Mr. Mackay was out there and he pointed me out to one of the men as being an employee of his, and it was in that way that I was put to work there. I worked at the Stables in the summer of '37, perhaps three months, as a shill. I did a small amount of dealing on craps. I worked in the day time and a few double shifts, Saturday and Monday nights. As I recall, Pete Riley was my boss during the day out there. I couldn't definitely say who was my boss in the night time when I worked there. After I left the Stables

I went to the House of Niles. I saw Mr. Mackay 463 there. He asked me if I wanted to work, and I said I did, so he told me to wait around, but in the meantime we were told to go home, that we would not work out there. The next time I worked was the following spring, a few days at the Casino, usually on Saturday, perhaps not more than five or six days, as I recall it, that summer.

I met Mr. William R. Johnson. I have had conversations with him at the D. & D. Club—I would say in the spring or summer of '39. I told him I was dismissed from the Casino Club. I asked him if there was any possibility of my going back to work. He took my name, as I recall, and told me to go back to the Casino Club. In the meantime, he would perhaps drop out there some day and would speak to Reggie Mackay. I went back there and saw Mr. Mackay.

When I asked for Mr. Mackay he told me that he had not seen Mr. Johnson. I told Mr. Mackay that I would drop back again and see him later. He said it would be a good idea to go ahead and see Mr. Johnson, "and then you can come back and let me know what he said".

Cross-Examination by Mr. Thompson.

This conversation took place with Mr. Johnson and Mr. Mackay in the spring or summer of '39. I can not at the present moment fix the time any better than that. The fact that they asked me if I had a conversation with Mr. Johnson brought the conversation to my mind. I told him that I had. I didn't fix a date. I first talked with the attorneys in April, 1940. I didn't talk to anyone prior to that time, representing the Government. I was subpoenaed to talk to the U. S. Attorney, I don't know who gave them my name. I happened to have a brother who was working at the Casino and he received a letter and my mother opened it. He happened to be out of town and I brought the letter in, and the gentleman I talked to told me to wait, 464 and he brought out a subpoena for me. One man questioned me.

I can not very well fix the conversation any better than a six months spread. I would venture to say it was approximately along about May or June, '39. I went up specifically to see Mr. Johnson, to get back working at the Casino. I had been at the Casino. The last time I went there, I worked three months. As far as I knew, I was working for Mackay up there all of the time. Mackay told me he had to dismiss me for political reasons. That was the reason he gave me. All that I was given to understand, as I recall the conversation, was that Mr. Mackay at that time, I was called to his desk and I was asked if I had a political sponsor. He said he was sorry, but he would have to leave me go for the simple reason that there were some complaints that he had men working who were not sponsored by political men. I did not know that you had to have a political sponsor to get a job in one of these gambling houses. I did not have one when I started there. I did not know who found out I did not have one. Mr. Mackay simply asked me. I told him I didn't. I had gotten my job there through my brother—I don't think he had a political sponsor. He was not working with me. He was

let out, I think, for some reason. I am not sure, because I did not inquire into his business. As far as I know, Mr. Mackay had no complaint about my work. He did not complain to me. He told me he was up against it if I did not have a political sponsor—he would have to let me go. I asked him if it would do any good to get a sponsor. He said, "Yes, go ahead. If you can get a sponsor I will be glad to put you back on". I tried to get a sponsor. I went to my alderman, I think he spells it Bauer. I am not certain. He did not give me a ticket. I went back to the Casino and I talked to Mr. Mackay. I asked him if he thought it would do any good if I went to see Mr. Johnson, to see if he could get me a sponsor or get my job back.

465 I found Mr. Johnson at the D. and D. Club. I did not find him there when I first went there. The first night I went down I waited around, perhaps from nine o'clock until midnight. I had known Mr. Johnson to see him, but I had never talked with him before. I knew by reputation that he had been gambling around Chicago for many years. I did not think he might have some political influence. I did not look at it like that, necessarily. I thought perhaps he might be able to see Mr. Mackay and through seeing Mr. Mackay he might be able to put me to work.

Q. That is his same general reputation around town; is that right?

A. As far as I am concerned, yes.

I did not know anything about Mr. Johnson's relations with Mr. Mackay. I just took a shot in the dark to see if Johnson had any influence—you might put it that way. I waited at the D. and D. for Mr. Johnson to show up, and he did not show. I went back a few nights later. After waiting for some time, I saw Mr. Johnson. I would say he showed up between eleven and twelve o'clock. He asked me why I was let out, for what reason. I told him that I had been working with Mr. Mackay since '37 and that Mr. Mackay had told me that he had no fault to find with my work, and I asked him if it would be possible for him to use his influence to get me back to work. He asked my name and told me that within a week's time or so, he would drop into the Casino. I think, as near as I can recall his words, he said to go back out and see Mr. Mackay in about a week's time—"In the meantime I probably will be stopping in there". He did not tell me what

else he was going to do in that week. He didn't just order me put back on the job out there. He talked for not more than five minutes at the most. I don't recall if any-
 466 one was with him. He came into the gambling casino there at the D. and D. Club. I did not know Mr. Johnson personally. I had to introduce myself to him. I explained that I had been working out here for Mackay for some time, since '37, and that he was letting me out only because I did not have a political sponsor. About a week passed and I went to see Mackay again. He told me that he had not seen Mr. Johnson. I told him perhaps that I would drop back later. I did not drop back for the simple reason that in the meantime the Casino closed, and there wasn't any use in going back. So Mr. Johnson did not get me back on the payroll at the Casino. That is the end of that deal.

MARTIN JEROME O'LEARY, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Martin Jerome O'Leary. I live at 1625 East 67th Street. At one time I was employed at the Southland Club. That is 6240 something South Cottage Grove Avenue. I was a shill and a check dealer. I became a dealer by going to school they had on the first floor. The club is on the second floor. The school was a large room that was used for a storeroom for chairs, fans, cash registers, etc. There is nothing else stored, to my knowledge, in that room. I went to two sessions in that school. There was a session in the early part of the summer for two weeks, in 1938, and then in the early spring of '39. I was there for approximately three weeks. The school ran six days a week, from five o'clock in the afternoon until seven in the evening—I should say, roughly, about a dozen were in attendance at the class at this school. The gentlemen
 I went to school with were from the Southland Club.
 467 Mr. Thompson: We object to all this testimony as immaterial and tending in no way to prove the issues in this case.

The Court: Overruled.

The Witness: I should say the same number, between twelve and fifteen, were in attendance in this second session of about three weeks in 1939. The same time was consumed per session.

I know who the instructors were in that school. They were older employees of the Southland Club, one by the name of Roy Howe. The second one was one by the name of Jerry the Junker.

Q. How did you happen to go to that school, Mr. O'Leary?

Mr. Thompson: We object to that as immaterial, how he happened to go.

The Court: Overruled.

The Witness: I heard the school was in progress, so I inquired of the night manager, Mr. Kalus, if it was possible for me to go, and he said "Yes, it was." That was Mr. Kalus, the night manager of the Southland Club.

I worked at the club at 97th and Western. I worked there for a period of about three months in the summer of 1939. The Southland Club was closed and they transferred activities to Western Avenue. I was told to go out there by the day manager of the Southland—I don't know his full name. All I know him by was Solly. This fellow was a short Italian gentleman. The pay was \$4.00 a day as a shill. I got \$1.00 an hour as a dealer. On the day shift I worked until seven and on the night shift we worked from seven until closing time. I am now employed by the Carnegie, Illinois Steel Corporation. During this instruction they had two dice tables down there, and when you first went in you learned to feel the checks, getting 468 accustomed to picking them up and putting them down. By checks I mean the poker chips they played with—they were called checks. They were just like ordinary poker chips and later on, as you progressed your hands became accustomed to picking them up, and you went over to the second table, where the fellows would stand around and pretend they were customers, and they had a synthetic dice game. The same procedure was followed every evening for a period of two hours.

Mr. Thompson: We move to strike the testimony on the ground that there is no connection with Mr. Johnson, doesn't in any way tend to prove the taxable income of Mr. Johnson, or any of the other issues as made by the indictment in this case; it is outside the bill of particulars.

The Court: Overruled.

MARGARET ANDERSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Margaret Anderson. I am employed by the Hollander Storage and Moving Co., in the 3215 Lawrence Avenue branch. That is a warehouse. I have been employed there since '22. I am familiar with an account of the warehouse known as the Barnes account. As near as I remember, that account originated in about '27 or '28. I know that the Barnes, whose account was with us died in about '34. After he died we carried the name under Barnes. The only one I remember we had any dealings with in reference to that account would be Mr. Roy Love or Henry. We had dealings with Roy Love or Henry a number of years—I can't tell exactly, up 469 until about '34. We did have occasion, at the Hollander Warehouse, to receive a lot of equipment last October of 1939. Government's Exhibits, O-191 and O-192, for identification, are for rent of space for equipment that was received on this date. I do recall the circumstances of the issuance of these documents. We brought in a couple of loads—and there was another mover that brought in a couple of loads—I believe it was the Kedzie Motor. I made up these documents here. I made up Jack Sommers' Exhibit O-192 first, and that indicates the space rented as these room numbers here, and that is warehouse receipt C-4841. The next documents, Exhibit O-191, is issued in the name of James Hartigan. I made that document at the request of Jack Sommers. I had a conversation with Sommers relative to this—I can't remember the exact date—it was shortly after the goods came in. He asked me that we divide this account and make half of the bill to James Hartigan and send both bills to himself. He did not specify which half of this equipment was his and which half was Hartigan's. We have no list of what is in the storage room there. This does indicate that there was a rent of six different storerooms.

On three different occasions Sommers has paid these bills, January, April and June, both for himself and for Hartigan.

Mr. Plunkett: The Government will offer Government's Exhibits O-191 and O-192.

Mr. Thompson: Object to the exhibits on the ground that they are immaterial, tend in no way to prove any issue in this case, no connection with any of the defendants except the two named on the exhibits, and hearsay as to the others.

The Court: Overruled.

(Said instruments, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS O-191 and O-192.)

Mr. Plunkett: At this time also the Government will offer Government's Exhibits O-193, 195, 196, 197, 198, 199, O-200 and O-201, which were previously identified by Mr. Hollander as being records of his company.

Mr. Thompson: These are nothing but transfer slips. We object to them as immaterial, as tending in no way to prove any of the issues in this case, and as hearsay as to all of these defendants; none of them wrote any of these slips.

The Court: Objection overruled.

(Said instruments, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS O-193, 195, 196, 197, 198, 199, O-200 and O-201.)

IRVIN H. EHRLICH, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Irvin H. Ehrlich. I live at 1729 Farwell Avenue. I believe I was employed at the Lincoln Tavern in 1938. I got the job through a friend of mine. I had a note to Mr. Hartigan, asking him to put me to work. This friend of mine, Rosenthal, gave me the note. I know the defendant, William R. Johnson. I just talked to him once or twice, I believe. I talked to him out at the Harlem Stables. To the best of my recollection, it was 1939. I did not have any conversation with him prior to that. I do not know whether I ever had a note or letter from the defendant Johnson. The note was signed "Bill"—that is the only thing I know. This friend of mine gave me that note.

That is the note I gave to Mr. Hartigan. It said, "Please put bearer to work."

471 Mr. Thompson: I object to the recital of the contents of a written document.

The Court: Let it stand. Overruled.

The Witness: The best of my recollection as to what was in that note was "Please put bearer to work." I don't know exactly how it was worded. It was signed "Bill."

Mr. Thompson: We object to that as having no connection with any defendant in this case.

The Court: Overruled.

Mr. Thompson: The source of the document and the fact that it was delivered to one of these defendants does not prove anything.

The Court: Overruled.

The Witness: I was not present when that note was written.

I worked at the Harlem Stables, off and on, a year. It might have been from the end of 1938 to the end of 1939. I wasn't working at that place all of the time. We moved a few times when the place was closed. I was transferred. I started out with the Lincoln Tavern, then went over to the Harlem Stables. Nobody told me to go to the Harlem Stables. The place was closed and I went down there. I heard that other place was open. I went down there and was put to work. I shilled at the Harlem Stables. At times I had charge of slot machines. Mr. Riley was my boss at the Harlem Stables. I believe, the defendant, William P. Kelly, at times. I mean by "at times" when the other places were closed, they had several bosses. I reported at that time to Mr. Kelly. Mr. Kelly asked me to take charge of the slot machines. Mr. Riley and Mr. Sommers was there. Mr. Riley was in charge of Harlem Stables at night. Mr. Sommers seemed to be one of the bosses, but I don't know what his capacity was. I don't know all the names of the persons working at the
472 Harlem Stables. I just know them by sight or nicknames—I have forgotten most of them.

I have heard of Reginald Mackay. I don't know him personally. I don't think I would know him if I saw him. I don't believe so.

Mr. Hartigan was in charge at the Lincoln Tavern. I don't recall any one else.

I just know the defendant, John Flanagan, by name—I could not state definitely whether Sommers was out at the Lincoln Tavern when I was there.

I am now working at the I. S. Berling Printing and Lithographing Company.

I started to work in gambling houses in the fall of 1938 and ceased to work around the end of 1939. Towards the end I was just working there Friday and Saturday nights. I was working in the capacity of a shill. I believe I worked one or two days at the Casino. The other places were closed. I looked for employment. To the best of my recollection I believe the defendant Sommers pointed me out and I was told to go to work. I believe it was in 1939 when I was pointed out by Sommers at the Casino. The rest of the places were closed. I worked one night at the Casino as a shill. I don't know definitely who was in charge. Mr. Sommers, Mr. Riley and, I believe, Mr. Hartigan, were the several bosses there then. I shilled at the crap tables and sometimes roulette.

I believe I did have one conversation with the defendant Johnson at the Harlem Stables—I don't know exactly when—sometime in 1939. Nobody else was present. I asked him if I can obtain a better position. He said, "I will let you know." I didn't have any further conversation with him after that. I did not have occasion to see the defendant Johnson while I was working at these places except on the occasion I mentioned.

I was paid daily by cash when I was employed in 473 these places. That holds true of all the gambling houses at which I worked. I sometimes worked in the day time and sometimes night time. The day employees were paid sometimes in the afternoon; the night employees were paid all the way from 9 to 11 or 12—sometimes it was loose, and sometimes in just a regular Manilla pay envelope. The man who had charge of that distributed the pay while I was working there. I do not know his name. I believe he was the payroll man. When I was at Harlem Stables he paid me there. He paid me at the Lincoln Tavern. The same man did not pay me at the Lincoln Tavern. I believe Mr. Riley paid me at the Lincoln Tavern. I have named all the places at which I worked. I never was in the Horse Shoe.

Cross-Examination by Mr. Thompson.

I am a clerk in an office when I am not working at a gambling house. I have done cost accounting work. I do cost accounting with a printing company. The employment in 1938 at the Lincoln Tavern was the first employment I had in a gambling house.

I had not talked to William R. Johnson prior to the time I went to work at the Lincoln Tavern—I did not even know him. I did not know anybody named Bill at that place. Bill is a general name. I know a lot of people by the name of Bili. I know Bill Walters—several names—I can't recall them off-hand now. This note that was handed to me was in effect, "Put bearer to work." That was handed to me by William Rosenthal. He might have been called "Bill."

NATHAN COBB, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

474 *Direct Examination by Mr. Hurley.*

My name is Nathan Cobb. I worked at a place known as the Horse Shoe, located at 4721 North Kedzie Avenue. I didn't know it was a gambling house until I found out. I was what they call a shill, on all of the games, dice, bird cage, what you call chuk-a-luck, 21, blackjack, roulette. I got \$4.00 a night for shilling at the Horse Shoe, paid every night before going home, sometimes before 10 o'clock.

I was working for a gentleman by the name of Mr. Jack Sommers. I was working under Mr. James Hartigan. I found out that he was the real night boss after I worked there a couple of weeks. I worked at the Horse Shoe for eleven months straight, from the night I came in there. I started about four or five days before Decoration Day, seven years ago—'25, '36; probably eight years, 1934. I did do other work there besides working as a shill.

Examination by the Court.

It is a year and a half since I was discharged and I worked there close to five years, in and out, that is five, and two is seven—I am sure it was—well, a few days before Decoration Day in that year. Take off six and a half years from forty. That would be in the middle of '33.

Mr. Hurley continues examination:

The Witness: A part of the time I was helping running the slot machines. There were perhaps twenty-five. He used to give me and another man nickels and dimes and quarters, whatever we needed, and we would give to the customers in exchange for half dollars or currency. I worked nights sometimes from 8 until 3, sometimes from 10 or 11 until 2 or 1, as emergency, whenever they called me, I was doing that kind of work. The slot machines were emptied while I was there—once a night and 475 sometimes twice. I think the gentlemen with the name Barney McGrath emptied the machines. He got the money to make change from the cashiers on the little mezzanine floor.

I did see someone repair those machines a few times during the month that I worked there after I got acquainted with one or two of the gentlemen and found out that they were sent from the Mills factory, whatever you call it—if they were getting out of order, or for other purposes didn't work; if they worked too fast or too slow. I don't know, but I had a personal acquaintance with two of them. They opened them up many times. Sometimes they were getting out of order. They were not in charge to take money out; I know they were direct from the factory because I got to be very well acquainted with them by and by.

I know how the machines were set, ninety in favor of the house and 10 in favor of the customer. There were between 22 and 25 machines in that place.

I did work at other places besides the Horse Shoe. I did see slot machines in these other places. The next place I saw slot machines was at Tessville, re-named "Lincolnwood", I guess, later. That is also known as Dev-Lin. There were about twenty machines. I was not in charge of the slot machines at Tessville, but I went there many times in my spare time and saw customers

playing them. Once in a while I took a chance on them myself. Mr. McGrath emptied the slot machines at Tessville, but I found out it was a brother of Barney McGrath.

Q. Do you know his first name?

A. Well, I can't think about it, unless you let me see my memorandum in my pocket.

Q. That is all right. Did you see machines at any other place you worked?

The Witness: I did, at the Lincoln Tavern. I saw not less than twenty-five there. I did not work at the machines there. Mr. McGrath, the one I mentioned last, took the money out of those machines, Barney's brother. The other place that I worked I believe I did not see slot machines.

I did work at the Harlem Stables. I saw not less than twenty-five there. Pardon me, I didn't think about it. I did not work at the machines at Harlem Stables. Mr. McGrath, the one I mentioned last, took the money out of them there. I did not see these men from the Mills Company at these places I have mentioned besides the Horse Shoe.

After I worked at the Horse Shoe I next moved on Milwaukee Avenue, near the House of Niles. I was shilling at the House of Niles. I worked there about three weeks the first time.

I know the defendant, William R. Johnson. I saw him many times when I was working at the Horse Shoe. For the first eleven months that I worked I saw Mr. Johnson there about four or five nights on an average of each week. When I saw him he was acting like the head of the house. Mr. Jack Sommers, a gentleman, a friend of mine, was the manager of the House of Niles. When Sommers would not be there there was some other gentleman taking his place for a while—call it what you may. That was the defendant, Hartigan. I also recall Mr. Wait. He was in charge of the roulette wheel. I worked at his table. There were a few more gentlemen there besides those three men I have mentioned. We used to call him Shorty Bowery. I was paid \$4.00 a night, every night, at the House of Niles.

I saw the defendant Johnson at the House of Niles. I saw him probably twice a week, sometimes once a week. The first time I worked there about three weeks. I did work there once more. I worked there a few days the second time. I saw the defendant Johnson doing the same

thing, acting like the head man, as in the other places I worked, when he came into the House of Niles.

477 After I worked at the House of Niles I went back to Tessville for a while, doing the same work, shilling. When I went back to Tessville I worked a good many weeks, but not as steady as I did at first. At first I was getting four nights a week and then one of the owners took me off the night. That was the gentleman by the name of Kalus. I don't remember his first name. I was left with two nights a week, until I was looking for a remedy, how to get more nights than I did.

I asked someone out at the House of Niles for the reason why I was taken off the night or two, while others were getting full time. I may express myself that they passed the buck from one to another one, until I found it necessary to see the highest authority in there. That was Mr. Johnson himself. I did talk to Johnson about it. Before I talked to him a friend of mine that I took along talked to him first, because I had no chance to talk to Mr. Johnson. He was too busy when he was there and only stayed there a short while. Then Mr. Johnson called me. I talked to Mr. Johnson in the presence of a personal friend of mine, whom I have known for many years. I was shilling at the bird cage when somebody called me. I turned around and I saw it was Mr. Johnson, so he called me aside and asked me, "How many nights are you getting?" I told him I was getting five nights. Mr. Kalus took me off a night. I was left with four. Then he took me off another night. Then I am left with three. I didn't see the opportunity of talking to him personally. I have a friend of mine that wants to talk to him, to ask him if he will extend me the courtesy to get me back four nights a week, or maybe five. Johnson called me back and talked to me in the presence of the friend of mine that I had brought along with me that night. He was talking to my friend. He says, I didn't see why they picked on me. I am not a politician, by profession. I am running gambling houses. I have jobs here from Courtney, Pat Nash, and Arvey and Toman and a few more, the gentlemen he 478 mentioned. This is not my profession—I am not a politician, he says. So they kept on talking to my friend. He talked to me. He left my friend alone and took me to Mr. Kalus and told him to give me five nights. Johnson said that, and then he walked back with me to this friend of mine and talked of several subjects, and the friend of mine told me that after that, in case—I

worked five nights a week after that until I was taken off two nights again. I had to see Mr. Johnson again, at this same place. It was really the same week or next week I mean. I did talk to Johnson there. He gave me another night. He says, "Sorry, it was overlooked". He gave me an additional night. He gave me back the four nights. There was nothing further said at that time.

After I left Tessville I did not go to work some other place for a while. There was no work for anybody for a while. I did, at some later time, go to work at the Harlem Stables. A few of the gentlemen were managing that place when I went over there. They were Jim Hartigan, Mr. Jack Sommers, a gentleman by the name of Mr. Kelly. I can't recollect his first name, a few more, Mr. Sullivan. I can't recollect his first name, a tall man about six feet, nice built gentleman, Sullivan; and Mr. Shorty Bowery, or Bauer, Mr. Kalus—I never did know Kalus' first name. I was shilling at the Harlem Stables in all the games except keno. I got \$4.00 a night when I worked there. It was given to me in a bank pay envelope about two and a half inches by four and a half.

I did see the defendant Johnson when we were working there at the Harlem Stables. I worked there a few months. I saw Johnson in there while I was working there about three or four times a week. He was doing the same as in the other places, acting as the highest authority while he was there. When Mr. Johnson wasn't there Mr. Hartigan acted as the highest authority. I see a good many
479 of the gentlemen that I mentioned Okay checks at these places that I worked. Mr. Hartigan, Mr. Jack Sommers and when they were not in a gentleman by the name of Tony Steele and a few more Okayed checks.

After I worked at the Stables I was sent back to the House of Niles. I worked there about two weeks. Mr. Jack Sommers was managing that place when I was working there.

I know the defendant, John Flanagan. I saw him at Tessville the first couple of times acting as a visitor, and then taking part charge if some of the bosses were not there. I did see him when he went back to Tessville.

I worked at the Casino one night. The whole city was closed, as I understood. I was standing at Kedzie and Lawrence. I found out that there was work at the Casino—I thought maybe I would take a chance. Maybe I could get a little work there, and I went down there. I worked there one night—I was shilling.

Q. Who was the manager when you were working there that night?

A. I am trying to think of his name, and somebody else.

I know the defendant Creighton. I saw him at these places many times. I saw him work at Tessville a few times. He acted more like a visitor out there. I saw him at the Stables a couple of times, just acting as a friendly visitor. I once saw him working at Tessville. He was placing men to work—those who I understood were favorites—because they would not place me for many, many nights. He wasn't doing anything else.

I know a man named Roy Love. I first met him at the Horse Shoe. He was not doing much of anything at that place, just going around and talking to people, dressed very nice most of the time. I did see him at other places. The next place I saw him was in the—downstairs, the store, about four or five doors South of the Horse Shoe.

The windows were smeared up with white chalk or 480 paint. There were fixtures, wires, fans, lamps, tables, tools, in that building. It was packed to capacity and sometimes there wasn't enough room to get in there. The tables were the kind that were used all over, the places where I worked, including tables where you sit down and pass a little time, to play pinochle or rummy, and work tables, benches. There were a lot of other persons in that store besides me and Love. Most there was that worked in the places. The city was closed then and I found out that this was the place you would find out when they will be open, where we will be sent. I used to come in there sometimes, in the daytime when I went away. I was there nights. After I stayed there an hour, half an hour, I went home, left the man in there. I did once go to work from there to one of these places. I found out that there was one place working. I went from there in the place that they were working.

I saw the defendant Johnson there once. There were probably about twenty-five men there. I had worked with them all over the places. We worked together. They were men like me, shills, dealers, box men, sometimes floor men, what you call. Johnson came in and several of the gentlemen there were talking to him separately. Mr. Roy Love asked Mr. Johnson what to do. He was standing with tools in his hands, wires, whatever it was, and in the couple of boxes like carpenter or electrical tools. He was telling Mr. Johnson what he had done, what he shall do.

I heard him say that he done some work, dug holes. They have cement blocks to make, or make the holes to put in cement blocks, and mentioned carpenter work, whatever it is, electrical work. I didn't know where this electrical work was done the first night, but I found out a few nights after where the work was done. It was in a new place where they were building, somewheres way out North. I found that they were building a beautiful place way out North. I heard the name of the place, sounded to me more like a half French name.

I saw Roy Love once in Tessville. We were closed. 481 I didn't know we were closed until I came to work, when I saw the whole place just like a riot. If I may explain it to you, everything was turned up, tables taken apart, and everybody don't work. All of us done work to help do whatever they told us to do to get things out of sight. Love was there and Mr. Jack Sommers was there, and Barre. Mr. Solomon was there and Mr. Wait came in there later, and then Mr. Johnson came in quite later—must have been about 9:00 or 9:30, the same night, and **many of the other gentlemen.**

Love was directing the crew of men what to do, and directing a big fat man, a teamster, I knew he was a teamster, I don't know his name, never did know his name, but I saw that same teamster many places moving stuff on trucks in and out. Mr. Love was giving the last order to the man. After the place was all taken apart there was some wires hanging in the ceiling after they took the fixtures out and Mr. Love says, I don't want those wires, take them clear off the ceiling, just leave one inch or two inches out, and two men steps out, up on the ladder, and they couldn't do it, and so they went down to Mr. Love, and he is a little short fellow, a little humped back, and he crawled up the high ladder very handily and cut those wires off clear to the ceiling and put tape around them.

It just happened that I walked, and Mr. Johnson came right in front of me, and, if I may explain you, he says, well, he says, it is all off. Really, he made it the way I am trying. He said, well, that is all. He didn't say anything else at that time. I stood there probably a couple hours and then I found out just as soon go home, else I would have a hard way of getting home. It was night. I left Mr. Johnson talking there to Mr. Wait. I had been there perhaps two hours or so. That was about two and a half—probably three years ago, in the summer time, or rather early in the fall—probably the early fall of '36.

Johnson was mixing with what you call the bosses
482 when I left. Mr. Jack Sommers was there, Mr. Kelly,

Mr. Hartigan, Mr. Wait and Oglesby. That is the name I couldn't mention before, a well-known figure in charge, and Mr. Love was there, as I mentioned before, in charge of men.

When I worked as a shill I sometimes got my money, from the man in charge of the shills before the Social Security started. After that they come to me wherever I was, at the tables sometimes, and tell me to go in line and pay my social security. I used to pay 4¢ a night, and the pay was handed to me. As far as I know, I paid the men that had the book, in charge of that Social Security. I did pay my Social Security every night and every place I worked before I got my envelope with my pay. You got a certain amount of money to use when you were shilling. There was a difference in that money and the money that the customer would use if he played. If it was a ten dollar bill it was stamped with a date on it. It looked like a rubber stamp in red. The minute I got to the table with that stamped money I laid the money on the table and they gave me checks for ten or for twenty dollars, or for whatever I was getting from the boss of the shills to go to the table. The one that won at a crap table and made up his mind he wants to quit and take his money he would tell to the box man or to the cashier at that table, he would move his chips in the middle of the table, then they would put the chips, most of them, in twenties, and then they would count them, and then they would say \$60 is going out. It would be sent to the runner, the one that used to come and go back and bring the \$60 to the box man. The box man would give it to the man that won the money. Most of the time the box man would holler out, \$60 going out. If a shill was playing at one of these games and he won they would say \$60, but not going out.

483 A few times we were called together at the end of the evening and told what to do. There was a shill bill lost once, the first time to my experience. Mr. Hartigan would call us together at the rear of that place. The first time it was at the Lincoln Tavern. Before we went home we were told to wait, all the shills, in the rear. We waited, and Mr. Hartigan told us, direct or indirect, I don't accuse anybody. The second or third time that one of the shill bills is lost. Next time it will happen I will fire the whole crew. That is what happened after the shill

bills was lost. Next time it will happen I will fire the whole crew. I don't know who it was. And again, I want to remind you that when you go home, or come in here, or on your way amongst yourselves, or amongst the public, if you are ever asked who you are working for, don't say that you are working for Mr. Bill Johnson, and don't discuss about it. Don't discuss anything that is going on here, not only among customers but even among yourself. Talk about something else.

The last time I worked at one of these houses was at the Horse Shoe. The last time was April the 2nd. I worked as a substitute in the Post Office. I didn't make enough money. They didn't give me enough hours. I found out they are open. I went to the Horse Shoe a couple of times and asked Mr. Jack Sommers if I could get back to work. He says, I thought you are working. I says, no. That must have been couple of days before Christmas. He said I thought you were working. He put me back to work—only instead of nights I worked there day times. January, February, March, until April the 2nd, 1939. I was discharged by Mr. Sommers. I was signalled to leave the table where I was shilling at. That was forenoon. So I left the table. When I left the rest of the shills told me that Mr. Sommers wants to see me privately in the vault, so I stepped in there.

484 In the vault Mr. Sommers told me, say, Cobb, we have been watching you for a couple of weeks, he says, and I was told that you are taking money from the table and you are putting it in your pocket, quarters. How many quarters have you got? I says about twelve or fifteen, probably seventeen. And he says, what, quarters or cents? I says, quarters. He didn't ask me where I got them and how I got them, and didn't give me a chance to tell him how I got them, I really was shocked, I was surprised. He says, let's see. I took out all the quarters I had in my pocket and showed him. He says, well, I will have to let you go. He says, we have been watching you for three weeks. I says, why, what's the matter? Well, he says, you have been stealing quarters. Without giving me a chance. I says, wouldn't you let me finish the day? He says, no, sir, as far as me and you, we are through, the only one that can take care of you now is the big boy, you will have to see him about it.

I knew very well who the big boy was. It was Mr.

William Johnson. So I walked out of the vault and he followed me. Took my top coat and went home. I stayed downstairs a few minutes and I saw Mr. Sommers go out. I first thought I will make an attempt to talk to him and explain him something, but he went away with a blind man, an old timer, personal friend of his, on the arm. He walked out and I walked north, took the street car and went home.

I saw Johnson after that. I was directed that I can see Mr. Johnson at the D. & D., that is corner of Dearborn and Division, at a certain hour of night, which he is there, I was told by well known men, just like clock work, and I went there for two nights, I didn't see him, I couldn't stay that late, but the third night I succeeded in seeing Mr.

Johnson right there. I did talk to him and when Mr. 485 Johnson came in I was the first one to go near him, because I knew else I will have no chance to talk. I says, well, I said, good evening, Chief, may I ask a little favor? He says, what do you want? I says, will you please transfer me at 4020 Ogden? He says, transfer you. Ain't you working. I says no. And before I went any further he says, well, if this is what I heard about you, he says, well, what I heard about you, and while I was talking to him about three or four men, floor men, stepped over and I says, give me a chance. I will not alibi, will you give me a chance to explain, and he says, no, and he left me, with Tony Steel, and a few more men, he was a very, very busy man, I had no chance to talk to him any more.

I know a furniture store on Lawrence Avenue. I worked there a few nights. This place next to 4721 is a big empty lot, then there is a building, then another building. Most of the time it was occupied as political headquarters. I found out they were working there. They were playing games there, so I walked up in order to get some night time work. I did get a few nights a week there. When I came in there the first man I saw was Mr. Solomon, that fifth gentleman, the nice stout like gentleman. Mr. Jack Sommers came in there after while, and Mr. Hartigan. Shorty Barre was there. In order to get work I had to be first in line. I couldn't get in. There was a lot of shills standing there. That was about 8:00 o'clock, or 7:30. Being that I am short by size, there was a lot of taller ones than me. I tried to push myself in front, until Mr. Solomon tells me, "Never mind. Just because you are a

little fellow, you think I can't see you. Stay where you belong'. At that time Mr. Solomon sent me to the table to shill. I tried to go to a school for dealers, but they wouldn't take me. The school was on the Northeast corner of Kedzie, on the first street south of Kedzie. I am trying

to think of the name—there used to be a "horse shoe" 486 sign there, a luncheon. When they took the luncheon sign down there was a school there to learn how to deal. The Horse Shoe place is 4721, and this was the northeast corner of Kedzie, on the first street South of Lawrence, one block away, south of Lawrence avenue, on Kedzie, the Northeast corner.

I see the Hartigan in the courtroom that I was speaking of. I see Kelly that I have been talking about. I see John Flanagan and Sommers that I have spoken of, and the defendant Johnson, and Wait.

Cross-Examination by Mr. Thompson.

My name is Nathan Cobb. I have had that name since October 14, 1896. I was a photographer by trade or profession. I was working at my trade for many years. I was never a gambler by profession in my life. I had never considered myself a gambler until I found out that a shill is what they call a gambler's nickname, the lowest thing I ever heard in my life. I beg the Court not to be insulted or offended if I may explain it right.

I told that to my son, my daughter, and my beloved wife.

I commenced working in a gambling house about four or five days before Decoration Day in 1934.

If the Court will allow me, I have a few memorandums that I took out of one of my safety boxes which I keep. I kept them for my own reason, and if the Court will insist, I will explain why. For the reason that—for the four dollars that I needed very bad to make a living, because I lost \$35,000 in the last ten years. I had absolutely no use for such a place; it was a misery to me. I never heard such insults, nicknames, such low-called expressions in the English language since I came to this country, and I kept such memorandums in one of my boxes. A second one I also

have. I didn't get to that second box yet, because I 487 couldn't get access since I lost my beloved wife. I had two safety boxes in Chicago. I wrote those memorandums that I have spoken about since the third month that I have been an honorable shill.

I first went to work at the Horse Shoe. Mr. William Skidmore gave me my job. He was not at the Horse Shoe when I was employed.

Q. Where did you see Mr. Skidmore about this job?

A. A personal friend of mine, who I have known for years long took me down there.

Doc Williams was not his name, a much more honorable gentleman than Doc Williams. His name is Mr. Clem Graver, a personal friend of mine, like a brother to me always. He took me down to see Skidmore. Personally I never met Mr. Skidmore before, but I have known him through the newspaper articles for many years in Chicago. I saw him at his place of business at 29th and Kedzie. My friend that took me down there saw him first, then spoke to him personally. He called me in. I had a short talk with him. He took a card out of one of his desks, a small sized card, wrote something on it, and stuck it in an envelope. He said, "You go there, around seven or seven thirty tonight. When you get in there ask for Jim Hartigan and they will put you to work."

While he did not close the envelope, on my way the envelope was open. The card said, "Jimmy, put this man as a shill". I didn't know what a shill was then. I didn't know what kind of work I was going to do. I was told that I could make five, six or seven bucks a night. I spoke plain English, that is the way I was told. When I got there I waited until they pointed out who Mr. Hartigan was. I gave him the card. He took the card up in that little office. He came back in a couple of minutes and took me to a gentleman by the name of Cohen, who I found out afterwards was the boss of the crew. Cohen told me to sit down, that he would tell me what to do. I sat down a good many hours for a good many nights. That is all I did for the first two or three nights. They told me to watch the men go through the tables, and from the tables, don't say anything unless they ask you, for the first two or three nights, anyhow. I didn't report to anyone after I watched these people. At three o'clock they paid me. I went home and the rest of them went home. At that time I was getting my pay from Jacob Cohen. Ten minutes to three they came with envelopes and give us our pay. Nine times out of ten it was in an envelope. The pay was four single dollars in 1934. The pay never did change for the kind of work we were doing.

After the second or third night they gave me a ten dollar bill and told me to go to the table, and he would put me near a man, that the man would tell me what to do, what to lay on the table and how much to lay, how to watch, and when to take my money off the table, or my chips off the table. I did play that night. I played dice with white half dollar chips. I did shoot dice that night a few times. I had to when it came to me. I don't remember whether I won or lost. I won many, many times—more times than I lost. I never shot craps in my life until I came there. I just told you how I happened to get the job. There were others there that didn't know, as bad as me. Then I took in every night, every night more and more. Then I was sent from one game to another. I think I became such an expert they nicknamed me the Cavalcade.

Q. When did they give you that name?

A. They gave me that name when everybody said I made six, eight, and fourteen passes, which very seldom happens. In fact I made sixteen passes. I can verify that. I didn't know anything about it any more than the man in the moon. It happened I made five or six at my game. I made an average, but I made as high as nine and fourteen. So they named me Cavalcade, for that reason. And for another reason they named me Cavalcade, when I am 489 standing, when I am running the slot machines, which was between 22 and 25 slot machines, and I figured out that each slot machine took not less than two feet and a quarter. Consequently it must have been about between fifty-five and sixty-five feet of space. The customers needed nickels, dimes and quarters and were packed so heavy, I was running so fast handing out the change so fast that I attended to those machines, and that man that I helped says, "Well, you are a real Cavalcade this time," he says.

I made mileage. When I was there so many nights, I am telling you the God's truth, my feet were some times swollen, because I worked many nights three or four hours, just running, making this 55 and 65 feet, handing around nickels, dimes and quarters.

Then I had to watch some customers. They were sticking slugs in those machines. Then I was sent on the outside for that man.

"Cavalcade, you had better stay outside."

I did find the man, caught red-handed sticking in quarters.

The punishment was, they did not let him go back to the slot machines for several weeks, and a real rich woman, a Jewish woman, too.

For many nights my feet was swollen. I made miles. He said, "You are a real Cavalcade." A fellow named John, he was a relation to one of the bosses, what you call a straw boss.

I finally learned the dice game. I had had a sponsor since then. We spoke of the two times that Mr. Kalus took me off a night or two while other fellows that were not half as much as good as me, put them in six or seven nights and overtime. I felt it was, it is not worth while for me to live at 4200 West and go to Kedzie, going to Lawrence and Kimball, and take a bus to Peterson Avenue. And then 490 walk pretty nearly a mile of the way there on the road to Tessville, or riding a bus to Lincoln, and one winter zero and sub-zero weather for six weeks, to make two nights a week.

I did have one man help me. He did help me, as a personal friend, my sponsor. That was Mr. Clem Craver, that one, that took me to Mr. Skidmore in the first place. I asked him for help. He said "Cobb, I am going to do it for you". He came out the first time about ten-thirty. It was the sponsor, the only help I had to get, was from Mr. Bill Johnson. I waited there until twelve, twelve-thirty. Mr. Johnson called me away from the table, asked me "How many nights are you working?" and I said "I was four, I had four and five. They took away a night and then another night". He said "Who did?" and I said, "Mr. Kalus". He called me away from the table—he and Mr. Clem Craver were talking a while. Before I explained for what they were talking. Then he left Mr. Clem Craver alone without a minute, took me to Mr. Kalus and said, "Give this man five nights a week." And he said, "All right." And I did get five nights a week after that through the courtesy of my friend, called a sponsor. Then I went back to Mr. Clem Craver and Mr. William Johnson. We talked a while, joked a while, a little about politics, so and so. And I was told, "The next time, if you are in need, don't bother Mr. Clem Craver any more; go to the big boy himself." And I did. I did it once more. Mr. Clem Craver said in the presence of Mr. Johnson, "Now, the next time you do not have to drag me up here. If you need anything at all go to Mr. Johnson himself." That is what Mr. Johnson told me, "Don't bother Mr. Craver at all. The next

time if anything happens, if you need anything, come to me personally." And I did, because I was short of many nights again for no reason; but Mr. Johnson helped me again. And in fact he gave me cash twice, upon the word of my honor. I told him that my honor is my religion; my word is my honor; and I paid him back. When Mr. 491 Craver was there Mr. Johnson said, in front of me, "It is all right. I took care of him." And he says, "Well, I am not a politician by profession." He says, "I am running gambling houses. I do not see why I have Courtney's men, Kelly's men, Nash's men, Toman's men,—and he mentioned a few other gentlemen. I am not a politician by profession." And they talked a very few more words. He was a very busy man there. It was getting late, so Mr. Craver bade me goodnight and I went back to one of the games that I was given orders to go to at that time. Mr. Johnson didn't say right out in the gambling house that he was taking care of Courtney's men—he told it to me and Mr. Clem Craver—we were talking quiet, much quieter than I am talking right now—just between us. We were standing in the middle of the room. There were lots of people around—the public, players, bosses, floor men, shills, dealers and box men. I did not say that Mr. Johnson whispered this to me. Just like he would be talking normally. He said, "I am taking care of Courtney's men, Toman's men, Kelly's men, and Nash's men." He says to me "Pat Nash's men". He mentioned Brodie. He is a well-known committeeman, I think, on the Northwest side. I did not know him at that time. I do know him personally now. He also mentioned Sonnenschein.

Must I remember everything that happened with me from the day I was born? I mentioned enough names. That is all. I know he mentioned many more. I beg the Court to say I don't remember the rest of them, but he mentioned more names.

Q. Who are they?

A. Can I take a memorandum out of my pocket?

Q. Sure.

A. Gill.

Also Horan. I do not know which Horan that is. And he said some of these gentlemen from the County Com- 492 missioner's office, without mentioning the name. That is all, as far as I remember.

No one told me to keep notes of what I saw in these gambling houses. I never did report to any one what I

saw there. I never did show this memorandum to anybody until about a week ago. My sponsor was named Clem Graver. He was a West Park jobholder once and bailiff in the Municipal Court. He was a bailiff in the Municipal Court when he took me to Mr. William R. Skidmore. I did not report to him what I saw in these gambling houses. He continued to serve as a bailiff in the Municipal Court for a few years. He is not a bailiff there now. Doc Williams did not send me in to tell what I knew about this situation to the Government's attorneys or agents. I was summoned about three months ago.

I came home and my little wife told me there was a man here asking for you, and the way she explained, inside of a few minutes, he is not a plain man. "I think he is a man, perhaps from the government or from down town." That is the way she explained it to me. He left a name and address. I think it was in the afternoon of the next day I came down to this building and told them that my name was Cobb. I was told by a gentleman it would save us a trip back to your house. I don't remember his name. I only saw him once at that time. I don't remember seeing him since. When a man acts like a visitor in these gambling houses he talks to me or to you, if he knows you, and to some of the house men, floor men, some of the bosses and to the bosses in charge—just walking around, talking to people. Mr. Creighton, once in a while for three or five minutes near the little office there, talking and joking, just looking around the house. I never talked to the gentleman.

I believe the people that acted like visitors very seldom talked to me. If they did I kept away. And my orders

was not to talk to anybody, being in any of those places, if I could help it. I did listen to what went on around. I listened to all the conversations I could overhear. Many times I did not look around to see who was coming and going out of these places, but if I was facing the door I saw who come in. I sometimes wrote notes of what I heard people say in these places. I made these notes when I got home. I would write them down. I saved them, like I would the cancelled bank checks, which I have saved for the last twenty-five years. I saved these notes for seven years. I only worked for them about five years. I made notes until a day or two before I was fired. I made a note about being fired.

I said that Mr. Johnson used to come into the Horse Shoe about an average of five nights a week. He sometimes

stayed five minutes, sometimes ten, sometimes an hour or an hour and a half. I said he acted like the head man. The head man acts—I saw very many gentlemen and ladies go to the head man, talk to him. He would give them five, ten, or fifty dollars there, out of his pocket, or take it from the cashier's balcony and give it to him. I saw Mr. Johnson give people money many times, sometimes out of his pocket. Sometimes he would take it from the cashier's cage. He would just reach in and get the money and hand it to somebody. I saw him do that a good many times. I can name fifteen persons that I saw him hand money out of the cage. I will name you one—I do not know his real name, but also by nickname. I know more gentlemen by nickname. I can point him out. His name was "Cheesey", by nickname. He was a West Side Hebrew. By record he would have been worth a quarter of a million dollars if he laid off gambling for five years only. I saw this man Cheesey lose about \$50 up to \$3,500. The \$3,500 I saw him lose inside of five days. I saw him win as high as this amount and probably more inside of a real lucky week.

494 I found out that he was a professional gambler.

I saw Mr. Johnson reach in and get money out of the cage and hand it to a woman by the name of Texas Jean, or Texas Jane. She was a very independently rich woman. I heard that her father left her some ranches in Texas. She was a heavy player, a big winner and many times a big loser. That is the best description I could give for these people, Texas Jane, and Cheesey.

Q. What else did Mr. Johnson do that made him look like a head man?

A. I asked him once if he could do me a favor financially.

It was a few days before our Easter week. I told him that I am short of money. I have to meet a few bills, and if he could be kind enough to let me have some money. He did loan me some money. He took me over to the cashier's box and told the cashier there to give him \$25. and Mr. Johnson gave me the \$25. He asked me "How are you going to pay it back, in dollars?" and I said "No. I am going to pay it back to you in a lump, because I have a little income from property that I am behind on. I am going to pay it back in a lump." Which the first time I did.

I did not borrow this money from Mr. Sommers. I borrowed money from Mr. Sommers once, \$30., and gave it back. I borrowed \$25. from Mr. Hartigan, and gave him

back; I borrowed money once from Sherty Barre, and gave him back.

Q. Well, you borrowed money from anybody that would loan it to you, didn't you?

A. No, sir. I borrowed from Mr. Steele one time and gave him back the next month when I collected rent out of some of my tenants. I remember I gave him the money in quarters because a milkman of mine that was working for the Bowman dairy used to give my rent bundles of quarters, dimes. Twice a month he used to pay me the rent in quarters and dimes, one of my tenants in one of my buildings, for the past nine years. And I had quarters and dimes in my pockets many times.

Q. If you will answer the questions without talking so much we will get along faster.

A. O. K.

Q. Now, what else did you see Mr. Johnson do that made him act like a head man?

A. He talked to me once personally which I knew 100 per cent that he was the head man, talked to me personally once.

Q. Made a confidant out of you, I suppose?

A. I didn't hear you.

Q. He got confidential with you, did he?

A. I don't know. It is a little joke he had.

Q. A little joke?

A. A couple of times after that—it sounds like a fairy tale—if the Court will permit me. I had private conversations—not private—with Mr. William Johnson, which is he got a kick out of it, I think. So did I.

Q. Well, did you do any work while you were around these places?

A. Sometimes I sat an hour and a half or two hours waiting until they will give me a signal where to go and do my work.

Q. While you were sitting you kept your eyes and ears open, didn't you?

A. I had many opportunities to see and keep my eyes open what was going on in the inside little office where the bosses was, private business, and nobody else has right to go in there.

Q. You could see from the point where you were sitting what was going on in the office?

A. Yes, because there was a long bench, if I had no place to sit where the shills were sitting, we were per-

496 mitted in emergency to sit on a shorter bench, which was right near the entrance to the private door of the office.

Q. Did this go on in all these places where you worked?

A. What do you mean?

Q. Are you talking about all the different places you worked now or just some different places?

A. Well, in another place or two I had opportunity of being right close to the office, yes, sir.

Q. Now, the Horse-Shoe, how long did you work there the first time?

A. Eleven months without a stop, until Christmas eve.

Q. Christmas Eve, what year?

A. Well, I worked through a whole winter and a whole summer. I started, as I told you, a few days before Decoration Day. I worked the whole winter and whole summer and the fall until the night before Christmas. When I came to my work I couldn't get in and I told you I was told the place was closed.

Q. What year was that?

A. 1937.

Q. 1937?

A. '37—I believe in '36.

Q. 1936?

A. Yes.

Q. You worked at the Horse-Shoe?

A. At the end of 1935, of Christmas Eve, yes.

Q. You worked at the Horse-Shoe continuously from May, 1934?

A. For eleven months.

Q. Until Christmas, 1935?

A. Christmas Eve.

497 Q. That was eleven months, is that right?

A. Well, I worked eleven months until Christmas Eve.

I said the slot machines were set to pay 90 percent to the house and 10 percent to the customers. I knew that by my experience and by the conversations that I heard
498 from customers that played them for years along and by housemen which told me once, what are you doing, throwing your nickels and dimes there, you chump, don't you know these machines are set for a return of 10 percent, and by customers. They kept on playing although they knew that it only paid one to ten. With the exception of one night I saw a woman come in there with a boy I

would judge wasn't over nineteen, I gave the woman that night not less than \$14 worth of nickels, and I heard her say, well, we will get the jackpot. She didn't win the jackpot and then she complained to Mr. Hartigan. I believe she called him over. And he says, well, you can sometimes throw in three nickels and win the jackpot and sometimes you don't, and she said, I put in close to \$14, and she wanted a dollar, or three, or maybe five, back, and I don't know if they gave her or not. I was very busy tending to the machines.

Men came from the Mills Novelty Co. to repair machines when they got out of order, fix or set the machines, as I know. I know a little about the mechanical construction of slot machines. It can be changed after it is manufactured and sent out by the manufacturer. I never worked in a slot machine factory. Mills Novelty Co. are the manufacturers of slot machines and coin vending machines and other coin machines. I saw their name on it. These men came to service these machines as often as they had to come. They came to me from the office and to the men working with me. Sometimes a machine would get stuffed, stuck, and wouldn't work and they would fix it so it would work.

I went to work at the Lincoln Tavern in the fall of 1936. I worked there all winter. I finished working there when we closed in the spring. We were closed at the Horse Shoe about the end of April. I stayed home until they opened. I found out that some of the places was open. I was staying around Kedzie and Lawrence with the rest of them until we found out. One of the bosses of the shills told me to go to Tessville. I went to work at Tessville late 499 in the spring of '36. I worked there all summer. The

Horse Shoe was not operating while the Lincoln Tavern was operating, not while I worked there. The Horse Shoe was not operating while the Dev-Lin was operating in Tessville. The Lincoln Tavern was not operating, that I know of, while I was working at the Dev-Lin. The slot machines were not at the Lincoln Tavern all the time I worked there. They were taken out once for a week or two.

Q. Were slot machines operating at the Dev Lin Inn while you were working there?

A. No, sir, not at this time, but I believe they did for a while.

Q. Well, did they, or didn't they?

A. Well, then, I will say "No". If it is in doubt, I will say "No".

I went home for a few weeks after the Dev-Lin closed. Then I started working out North, on Milwaukee avenue, called the House of Niles. I worked there the first time about three weeks in the middle of the summer of '36. I was not working there at the same time I was working at the Dev-Lin—everything was closed. I could not work in the Dev-Lin. As far as I know everything was closed.

I worked at the Lincoln Tavern in the summer of 1936. That was later, after they closed the House of Niles.

I worked at the House of Niles during the summer months, in 1936.

I started to work at the Lincoln Tavern in the fall of 1936 and worked there through that winter. That was in '37. I would say the Horse Shoe did not operate in the winter of '37, so far as I know. I didn't go directly from the House of Niles to the Lincoln Tavern. I was not working in the meantime—I was at Kedzie and Lawrence. I

saw one of my bosses, and he told me to go to Lincoln 500 Tavern, and I went there and they gave me my job back. That was the winter of 1937. I worked there all the winter of '37.

Mr. Cohen used to bring the envelopes to pay the shills at the Horse Shoe. After Cohen left the next boss of the shills paid us also in envelopes. It was either a brother or brother-in-law of Mr. Love. His name is Irving. After Irving became dealer all the different bosses of the shills paid me. Tommy paid me. Mr. Jacob Cohen paid me part of the time at the Lincoln Tavern. The next boss of the shills paid me after that. There wasn't any regular paymaster until we got our Social Security cards. The boss of the shills paid me at the Dev-Lin, until the Social Security came in, at the end of 1938.

My doctor hasn't told me that my mind was impaired, but I am under his care since my wife died. I have not been under treatment for a mental condition.

When we were moving out of the Dev-Lin Mr. Johnson came out there that night. He arrived probably 9:00 o'clock. I saw him around that place for not less than a half an hour, and then I left. He did not help load the trucks. All he did when he went by me was to shrug his shoulders and say, "It is all off", or something like that. He did not talk to me about his problems and troubles except what I said.

Q. This Mr. Oglesby you spoke about, who was he?

A. Once upon a time, he was my boss, big enough to hire me and fire me, because I was three minutes late. I had to walk pretty near a mile after I left the bus, so I was three minutes late, and he said, "Well, you had better stay home for two days." I tried to explain, but he wouldn't let me.

Q. Mr. Oglesby did that to you?

A. Yes.

Q. You don't know what his name is, do you?

A. Well, his name is Oglesby. I think that is his second name.

501 Q. Where does he live?

A. I don't know where he lives.

Q. What is his telephone number?

A. Except the telephone numbers of the boss of the shills, I ain't got any telephone or information, but I have addresses, which I have mailed to them from Hot Springs, Arkansas, last winter.

Q. You say some well known man told you when you could see Mr. Johnson up at the D and D Club. When was that?

A. I will tell you. Mr. Johnson's private chauffeur told me that he used to go with Mr. Johnson to a certain well known downtown club house. I don't know his name, but I will tell you who he is if I will see him. He is very well known.

Q. He was well known, but you don't know what his name was?

A. He became my personal friend. I knew him—met him at 4020 Ogden.

Q. Well, this well known man you are talking about, you don't know his name?

A. No, I don't know his name.

Q. Who was he well known to?

A. He was well known, because he was known to everybody; what you call an old timer. He told me he was Mr. Johnson's private chauffeur, for a while, when I met him as a dealer at 4020 Ogden.

Mr. Thompson: All right.

Q. What about this political headquarters that was turned into a gambling house? Where was that located?

A. This was located between the Horse-Shoe and the corner of Lawrence. In the days they were closed, that was

a stool pigeon place, but that place in there was not a stool pigeon place, because I couldn't tell from the iron doors.

502 Q. What is this stool pigeon place?

A. I worked at a stool pigeon place.

Q. How long?

A. Well, until what you call the stool pigeon—you move in inside of two hours, and there is no door, no iron door, or nothing, and they don't search your pockets, and you can look inside, not the kind of a place where you can look from the outside in. That is what I call a stool pigeon place. That place was not a stool pigeon place, but judging by the steel and iron doors that we opened to admit a customer or admit different shills, until it was—since then it became a political headquarters, ward headquarters. Downstairs used to be a furniture store.

Q. That is what you call a stool pigeon place?

A. That is a permanent place, where we work the stool pigeons, because you only work a few nights, then they are out again.

Q. How long did you work at this stool pigeon place?

A. I was not working at this stool pigeon place, no, sir, but the place I worked there—

Q. When you went up to this place you are talking about, where the doors were packed with shills trying to get in to get jobs, and you couldn't make yourself seen; is that right?

A. Yes, that is the place that after I had an opportunity to get in, because a man by the name of Goldberg was at the door, and he looked at me and said, "Well, go ahead, but there are too damned many in there right now."

Q. Who was Goldberg?

A. Goldberg was the man at the iron door when the door was opened.

503 Q. What was his first name?

A. Why do you ask this? His name was Goldberg, six-footer, real fat, handsome man.

Q. Well, what was his first name?

A. I don't know.

Q. Did he occupy an official position in this town?

A. In this town, no.

Q. Did he have any political job?

A. Not that I know, but he was a doorman, in the rear of one of these iron doors in the Horse-Shoe and in another place.

Q. Were there iron doors in this political headquarters?

A. Yes, sir, so I knew that this was a place—a permanent place, but I didn't mean "stool pigeon", but a sneak-in place.

Q. What is a sneak-in place?

A. A sneak-in for two nights, and then thrown out; had to sneak out.

Q. I know, but a stool pigeon place and a sneak-in place—

A. Pardon me. I meant to say "sneak" place. If I can explain it right to the Court.

Q. This was not a sneak-in place?

A. Not according to the iron doors, not according to the way they searched customers; searched me and all of the rest of us.

Q. Searched you when you went into this place?

A. Yes.

Q. Why?

A. I used to carry my lunch with me in a bundle. I had a hard boiled egg and a piece of matzos. They wanted to know—Mr. Goldberg wanted to know what I had in my bundle. I opened it. I had a hard boiled egg, a tomato, and a piece of matzos. They searched me.

504 Q. Searched you every night?

A. Searched me every night I worked in there, and in the Horse-Shoe every night for many months.

Q. Did they search you when you went out?

A. No, sir.

Q. You got up to this place where the people were so big you were scared that you would not be seen, but you were told that you would be seen notwithstanding that you were not very big; is that right.

A. I followed Mr. Sullivan—

Q. Mr. Sullivan?

A. Mr. Sullivan was the one running that place. When he came in, I followed him, and that is the time that remark was made. I walked inside, and there was two lines of shills standing in the middle of the room.

Q. Then you walked in and went to work?

A. No, sir. They were taking out shills and going to put them at tables. I saw them pick out sixteen or eighteen and not pick me, so I kept pushing, and Sullivan is the one that told me, "You don't need to push yourself because you are little". He says, "I will put you to work", and he did.

Q. How could you tell a shill from a customer?

A. We worked together there in the place. A few shills I didn't know so well for a week or so, until we worked, maybe two or three weeks.

I have not worked in gambling houses since I was fired in April, 1939. I have been to Kedzie and Lawrence 505 twice—that was before I went away to Hot Springs,

Arkansas, the second week in January. I thought I will meet there a man who used to be in charge, one of the bosses, straw bosses. I had something to tell him. They were not open. I went to Hot Springs by orders of my doctor. I have been going to Florida for the past thirty years, but never saw a gambling house—never was inside one. We had a place five doors South of 4721. During the time the city was closed we used to congregate to hear the news and when they will open, if they will open. Some of us 506 went there. I was told to go there and watch for Mr.

Bill Johnson and get money there, may be from ten to fifty. Bill's was a wonderful reputation. It was not hard to hit him for ten or fifty or twenty-five—he gave me. God bless him, as far as that goes.

Many people were in this meeting place when Mr. Johnson arrived. I went there to find out when I was going to get a job, when the gambling house was going to open. I found them there waiting for Mr. Bill Johnson. I heard he was due there. My friends told me they were waiting because they are broke. They are going to get money in. One of them didn't succeed, and I met him near McGrath's house. He said McGrath would give him money because he could not succeed, and I missed Mr. William Johnson. Mr. Johnson did not give me any money that night. It was in the winter of '38, when everything was closed, that Johnson met the fifty men in Roy Love's warehouse. It was late in the fall or early winter—I can't say the month. It must have been November. That is right, it was November, 1938. It was on a week day, at night. He arrived, probably 9:30 or 10:00 o'clock. While I was there he stayed five minutes. I left when Mr. Johnson came inside of five minutes. It was getting late, and I had a long ride home. I came in alone at that time. The room was packed when he arrived. Mr. Sullivan was there and Mr. Goldberg. I do not know Sullivan's first name. I do not know Goldberg's first name.

William Bush was there. Roy Love was there. His brother-in-law or brother, Isadore was there. Out of the house full of people I can only remember five by name. Mr. Johnson did not say anything, only "Hello".

MIKE KOENIG, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Mike Koenig. I live at 2157 West Wal-507 ton Street. I am employed at 4715 Irving Park Boulevard, in the Portage Park Bank Building. Government's Exhibit O-6 and O-9 are the pictures of our building where I worked. Exhibit O-6 is the Milwaukee Avenue side. Exhibit O-7 is the Irving Park Side. I have been employed there three years, doing janitor work. I am acquainted with a club that was located in that building, known as the Casino Club. It was opened after I was there. I have been in that place. It was located on the first floor of the building. I could not exactly say the number of times I was in there. I met someone that I came to know in that place—I think he was the manager or owner. I do not know his name. I knew him by the name of Reg.

Government's Exhibit O-206 is the room I came to know as the Casino Club. I oiled the fans and motors, dish washing machine and water cooler in the place. There was a place in the same building on the second floor, known as the Legion Hall. It was there when I first started working there. On the second floor of the Milwaukee Avenue side the length of the room would be the width of this room and about twenty or twenty five feet wide. It did not remain a Legion Hall all the time I worked there. Another party rented it. I was in there after the other party rented it I saw tables and chairs. The ordinary telephones in there. There were switches on the tables in connection with the telephone. It was divided into two small rooms. On one table there was a machine that looked like a typewriter. It looked about two feet wide and a foot and a half high. There was a microphone in that same room. I met Joe, Don and Skinny in that room. There were two entrances to the room on the second floor, one

from Milwaukee Avenue and one from the Irving side. The entrance from Milwaukee Avenue was a door that opened out at the street and the other one from near Irving were two entrances to the room on the second floor, one from Milwaukee Avenue and one from the Irving side. The entrance from Milwaukee Avenue was a door that opened out at the street and the other one from near Irving Park would go all around the building on the second floor, go through the public corridor. There was a 508 stairway that ran right upstairs from Milwaukee Avenue. There was nothing else behind the door. I did not have a key to that door on the Milwaukee Avenue side. I always used to go in there between eleven and twelve. One of the men told me to. I used to clean that place—sweep it out, wash the windows, and mop the floors. I did not do that every day. I did that about three times a week.

I did not see Skinny, Joe and Don in any other part of the building. They would come down to my boiler room—they just burned some paper—sheets about 8 by 5, 10 by 5 inches. About two or three times a week. They just had a package of it—I could not estimate how many packages. They used to come down with a waste basketful (indicating eighteen inches in height). They burned them in the boiler—I never did that. I just got to see the sheets from a distance. They pitched them into the boiler.

Government's Exhibit O-125, is a picture of a person I know as Joe that I have just been talking about. Joe is one of the persons that I saw brought these sheets down into the basement and threw them into the furnace. That situation continued about a year. After that the place closed upstairs. It was in the course of my duties to be in the premises at night. I have never seen persons entering that door at night that leads up to that room I have described. I was never up there at night.

Mr. Plunket: The Government will offer GOVERNMENT'S EXHIBIT O-206 for identification.

Cross-Examination by Mr. Thompson.

William Goldstein employed me as a janitor of this building. He is a lawyer here in town. I don't know where his office is. My uncle used to work for him. He got to know me over there. That was 1140 Granville. I got the job through my uncle. I got paid in the vaults downstairs by Mrs. Anglemire.

509 I saw Mr. Goldstein out around the building about two weeks ago. He just said, "Hello". I started working for him three years ago last night and I have been working for him continuously. The Casino Club opened five or six months after I started working there, about two and a half years ago. I heard the man who operated the place was known as Reg (indicating), the gentleman right there. Mackay is the name. He was the man who operated the Casino. They were closed a few times—I couldn't tell you how long they were open. This other place I spoke of was on the second floor of the building. The Casino had two entrances, from Milwaukee Avenue and Irving. They were regular store entrances—just walk right out of the street into the Club Casino. There were iron doors there inside. I don't know whether they were put there after the Club Casino opened or whether they were already there. I was not in there before they opened. I did not see this place being put in condition as a club. I was working there. I did not see the working men in the room. I did not see them construct any iron doors in this place. I did not hear any noise going on around there. Mr. Goldstein told me that the Club Casino had opened, that the people had rented that place—if they wanted anything fixed I should fix it. If I can't I should just tell them I can't fix it. I am not sure whether he told me that before or after they opened. They did not pay me the rent. I don't know anything about who they paid it to. I first got instructions to take care of the motors in this club just about the time Mr. Goldstein told me what I just told you. I then found the Club Casino operating. I heard it had been rented so I was not surprised when I walked in there. The first thing I know it was open and going. I hadn't seen any construction work going on at all. I didn't see any structural changes in the Irving Park side of the building, or the Milwaukee ave-
510 nue side of this building. The door looks just the same on the outside. The windows looked just a little cleaner. It did not have any new covering, draperies, or anything like that. They had Venetian blinds on there. They were on there before the club started. They had been there ever since I started there. All the changes I saw from the outside of the buildings was that the windows were washed. There was no name before the club started. I don't know who previously occupied this room. I think it was vacant until the club opened. I was never in there before. I never

had anything to do with that place. I had to do with the boiler room and the walks downstairs. I cleaned the hallway. When I cleaned the hallway I did not come in contact with this room that later became the Club Casino. It did not connect with the hallway. It is about the center of the building. It is not a triangular building. There is one entrance at one end and one at the other end of the building. Milwaukee Avenue and Irving Park intersect at that point. It is sort of an angle. Our building doesn't come to a point at that angle. There is another building on the corner—ours is the second one from the corner. This room goes clear through the building and hits Milwaukee at one end and Irving Park at the other. The room is approximately one hundred feet in length. The room is about fifty feet wide, between the two streets, about one hundred and fifty feet back from the intersection of these two streets. The part designated on O-7 as 4715 is the Irving Park front, and on O-6 as 3971 is the Milwaukee front. They have Venetian blinds on the front window. They were there when I went there. I don't know that it had formerly been a gambling club. I hadn't heard anything about it. I don't know where it got the name "Casino". It was not printed anywhere on the building.

This picture, O-205, is the inside of the Casino. I do not know what it is set up for. I recognize the inside. It is for a bookie. It is used for a horse parlor. That 511 structure up there in front is the blackboard. They have sheets up there. That is where they keep the names of the horses, the positions and so on. The raised platform is where they had them sheets. They were hanging with the black signs on. There was a man standing there on that platform, down below the chair and table. That is the sheet hanger's station. The chairs with the white covers on are customers' chairs. I did see customers in those chairs. I have seen the sheets hung up and taken down. I have seen the sheet writers at work just when he would change sheets. Those are the sheets up on the wall. I don't know where they made their bets. I saw them hand money, but whether it was to pay a bet or what, I don't know what it was for.

The Club Casino was not connected with the Legion Hall upstairs. You could not get from the Club Casino to the Legion Hall without going outside. The Legion Hall could be entered from the public hallway from the Irving Park side. It did not have a room number. I don't know

whether it was built for a Legion Hall when the building was built, or later converted. When I came there the American Legion was in there. They occupied the hall a little over a half a year, and then they vacated. The other business came in about four or five months after. It was empty four or five months. I don't know who rented that hall space. Mr. Goldstein did not talk to me about that space. There were no openings or entries made to it after they entered this hall. This outside opening was already there. That was entered by an outside stairway. I can not indicate on either of these exhibits, O-6, or O-7, the outside entry to the Legion Hall upstairs. That is only half the building on here. That is the Milwaukee Avenue side. The entrance to the hall upstairs, with respect to this picture, is at the end of the building to my right—I would say just another half of the building. It is at the other end of 512 the half that is not here. It is clear at the end of the building. There is two more stores there, and then comes the entrance. Just like from that currency exchange entrance. That is a currency exchange downstairs where the vaults are. This is the one that goes downstairs and the other end of the building has a similar entrance which goes upstairs.

This optometrist did not have his place of business here at 3969 before the Casino opened. He is there only about seven or eight months.

A photographer was in this room where the optometrist now is when the Casino opened. He sold films and pictures and things like that.

The other two stores are occupied. They are all new tenants, about a year since the Casino operated there. It is about a year since the second story thing operated. All I know about the men who operated the second story place is that the names are Joe, Don and Skinny. Joe was a sort of tall, slender fellow. O-125 is Joe. I don't know what his name was. Don was about your height, a little heavier. Skinny was just what his name indicates—tall and skinny. I saw these men come downstairs and burn some papers occasionally. I did not look to see what kind of papers they were. They burned them in the fire box of the furnace. In the winter the big boilers were running and in the summer the hot water heater was running, and they would burn it in the fire box of the hot water heater in the summer and in the fire box of the big boiler in the winter time. Coal fuel. They just opened it up and threw these things in

there. There didn't seem to be any secret about it as far as I was concerned, no discussion about it. I didn't ask any questions and they didn't volunteer any information. Mr. Goldstein didn't talk to me about that. I never told him anything about it. I don't know who paid the rent upstairs on that room. Mr. Orris collected all the rent from the 513 building. He works down in the vaults, too.

There is a machine up here in this second floor apartment that looked like a typewriter. I have not seen typewriters operating electrically. I don't know what a teletype machine is. This machine was never in operation. I don't know whether it was hooked up electrically. Just one of them there in that room. I never saw any teletype machines at the Casino. I didn't say the amplifier was up on the second floor—I said it looked like a microphone—I mean a horn, about three inches in diameter. I don't know if it is like the transmitter of a telephone. I don't know what it was. I didn't hear it operate. I saw telephone equipment in the bigger room. There were two rooms up there. The Legion Hall had one small room, where the table and machine were, and that big room had two long tables in there with telephones on them. There were about eight telephones on these tables. They were all just ordinary tables, and the old type of telephone. That was all that was in that room. It was occupied in the daytime, as far as I know. I started in the winter at six o'clock and worked until ten, sometimes eleven o'clock, at night. In the summer I worked from about eight until 6:30. This floor was occupied when I was there in the winter time. I was there ten or eleven o'clock at night. I don't know whether it was occupied during that period of time. I was giving heat in the evening. I kept down in the boiler room. I didn't go up and look who was occupying the offices.

The Casino was not running at night—just ran in the daytime. I never saw Reg Makay up on the second floor of this place. I never saw Joe, Don and Skinny down on the first floor. They were down on the first floor in the restaurant. I don't know that they had any part in the Casino. I did not see them there.

The restaurant that I saw Joe, Don and Skinny in belonged to the club. It was inside the Club Casino. Describing this hallway entrance to the second floor place from the

Irving Park side, you walked all around the hallway until you got to Milwaukee Avenue side and you went through two swinging doors and then you came to an ordinary door. There was another door there. There was a little partition between the two doors, about four feet square. There was nothing in the second floor. You obtained entrance just by knocking at the door and it was opened. You didn't go in the first door first and then knock at the second. You had to knock at the outer door.

I knew one worker around that place by the name of Roy—a short fellow—and he seemed to be crippled. He put up a shed downstairs in the basement. He covered electric meters with that shed. These were meters from the vault downstairs and the club upstairs and from our ventilating system. That ventilating system is for the vaults and for the club. I didn't see him do any other work around there.

Mr. Plunkett: May we have that admitted in evidence?
The Court: It may be received.

(Said instrument, so offered and received in evidence, was thereby marked GOVERNMENT'S EXHIBIT O-206.)

RALPH POLLACK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Ralph Pollack. I live at 654 Aldine. I 515 have gambled in the Horse-Shoe on Kedzie Avenue, The Dev-Lin in Tessville, the Lincoln Tavern, and the D. & D. I believe that about covers it. I have gambled in those places possibly six, seven, eight, nine, ten years.

I have known the defendant, William R. Johnson. I really just had one conversation with him. That was some years ago—perhaps two or three years ago. That was in Tessville. I was gambling at the time, at dice. There was a dispute regarding a call of the dice. It was between the dealer and the players. I was a party to it. Apparently it was a crooked dice and the majority of the players seemed to think it was a bad call on the part of the stick man. I lost, as a result of that. I was rather disturbed about it and cashed in my checks and walked away. After that Mr. Johnson stopped me and explained what happened, so forth

and so on. I couldn't see his point. He said, well, if you still think you weren't treated fairly I will reimburse you out of my own pocket. I told him I didn't want any money out of his pocket, I thought I had won it. And that settled it.

Cross-Examination by Mr. Thompson.

Crooked dice are when they don't land flat on the table, when they may be resting against the check or against the edge of the table. I mean when the dice are rolled they don't lie flat on the table. In other words, if it is leaning up against the edge of the table or against the check then it is crooked dice. You do count that. That is where the dispute comes in. Different viewpoint. Every roll of the dice counts. From where I was standing it looked like one series of numbers, one computation; from the stick man's side it looked like something else. That is what caused the dispute. I wouldn't say that the dice was standing up on one edge, maybe on a corner, maybe sideways, but at any rate they were not flat on the table, and from my perspective it was one number and from the stick man's it was 516 another. There was some dispute about it. Mr. Johnson happened to be there and said rather than have a quarrel about it he would pay me out of his own pocket. That is all there was to it.

Redirect Examination by Mr. Plunkett.

Q. How much was involved at that time?

Mr. Thompson: We object as immaterial. What is the difference?

The Court: Overruled.

The Witness: Oh, couldn't have been much, maybe ten, twelve, fifteen dollars. Didn't bet very big.

Mr. Thompson: We move to strike the testimony as immaterial.

The Court: Denied.

HARRY KUDESCH, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Harry Kudesh. I live at 4843 North Ridgeway. I have been out to a place known as the Harlem Stables. On the first occasion I was there by myself; later I went with different friends. I didn't exactly meet a man named Johnson when I went out there with some of my friends. I was in the company of H. L. Brodie and his wife.

Johnson was in the room that night. He had his hat and coat on. It was a crowded room, and I said hello to him and I dropped back. Hi called me over and said "You know Bill?" I said, "Yes, sir". That was all there was to it. We played a few games of Keno. A couple of days later I went to the Horse-Shoe and saw Mr. Sommers and 517 asked for a job and was put to work. Hi Brodie told me to go up there. I was a shill at the Horse Shoe. I worked there about five months.

After I worked there I went to work for the City, in the Water Pipe Extension Department, for about three months.

I next went back to work with Jack Sommers. I went up to see him at the Horse Shoe and I went to work. I drove an automobile from Broadway and Wilson to Kedzie and Lawrence. Jack Sommers told me to do that. I worked days, from twelve to eight. I received \$7.00 a day, and used my own car. The doorman downstairs at the Horse Shoe paid me. I worked about three months, driving from Wilson and Broadway to the Horse Shoe.

After that I went to work in the Assessor's Office for about three months. I was out of work for a little while. I think my next employment was back at the Horse Shoe. I saw Jack Sommers about going back to work there. I then drove a car again--Broadway and Wilson to Kedzie and Lawrence, I believe. I don't think it was more than three or four months that I drove on this occasion. I received \$7.00 a day from the doorman. It was in a brown manila envelope, about two by five, I would say, something like a regular envelope.

After that I went to work in the Park District. I was with the Park District about two and a half months, and after I finished my work with the Park District I saw Hi

Brodie again and he didn't have anything for me to do. During the discussion he says, "Why don't you try going out to the Stables?" I went out there and saw Mr. James Hartigan and got myself a job. After I talked to Hartigan out at the Stables I was driving an automobile from the end of Irving Park carline to the Stables. I got \$7.00 a night. That was paid in the same manner I described for the other occasions. I was driving from the end of the Irving Park carline to the Stables about four months. I was let out and I again saw Mr. Brodie and he said if I cared to, I might try to get in the Casino, at Irving Park and Cicero, 518, and I did. He said I could go to Irving Park and Cicero and maybe I could get some more work there, and I did go there and saw Mr. Mackay, and he put me to work on the inside, as a shill. I got \$4.00 a day as a shill. We walked over to the cashier's cage and drew our envelope. That is the same type of envelope I have described before. I worked two months as a shill at the Casino. The last day that I worked at the Casino was the first of June or last part of May of '39. When I went over to the Casino the last time I just saw Mackay on the floor. I had known him before. I had come into his place as a customer and I had come in to the place a few times with Hi Brodie. I asked if he had some work—if he had a place for me in the organization, and he said that I should start the next day, and I came back and went to work. I see the Mackay I worked for here in the courtroom (indicating the defendant Mackay).

Cross-Examination by Mr. Thompson.

Hi Brodie that I mentioned so many times is my alderman and ward committeeman. I am a member of his organization. I am an assistant precinct captain. I worked either on the public payroll or in gambling houses for the last several years. I worked as a shovel laborer for the water pipe extension, the City Water Department. I dug a ditch in the city streets. We had one job I worked on along North Avenue. I wasn't a timekeeper. I was a laborer, with a shovel. I was shoveling dirt, clay, or sand, whatever it would be. It was a job of cutting open sections to put in a new line of pipe. When I started they were at Hamlin avenue and worked west beyond Crawford—Pulaski Road, on North avenue. That was in May, June and July of 1937. The gambling houses were operating then. I last worked at the Horse Shoe Club, Kedzie and

Lawrence. I discontinued that job because at that time 519 of the year there was work. They get started every year at that time on different streets. I asked for a different type of job, if I could have it, and he gave it to me. I got \$7.60 a day for shoveling at the City Water Department. The first time I worked in a gambling house I received \$4.00. Then I got \$7.00 a day for driving, furnishing my own car. I got \$4.00 for the time when I worked as a shill.

I worked in the County Assessor's office in September, October, November of '37. I did clerical work there. We worked on the simple audits. My hours were 5:30 in the evening until 1:30 in the morning. They have a regular day crew. As extras they had a night crew.

I had an attendant's job at the Park District. That was to take care of the building, locking up, sweeping, and taking care of the fire. That was at Eugene Field Park. That was September, October and part of November, '38, I don't believe we had an election in '38 at that time. I was not put on just before the election.

After that I went to work at the Harlem Stables. I worked for about four months. Then I went to work at the Casino. I worked there a couple of months. Then I went to work at the Lake View Pumping Station. I worked in July and August of 1939. Then in the month of September I went to work on the Bureau of Streets in the ward office and worked up until June of this year. Since June I have been selling automobiles. Hi Brodie got me all of these jobs.

GERALD BRENNER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

520 My name is Gerald Brenner. I live at 4557 North Hamlin. I run a tailor shop. I was employed in a gambling house around Chicago. I was first employed in the Lincoln Tavern. The last time it closed, I think it was in '36, approximately around that time. I used to go out there and play Keno occasionally and took an interest in it. I asked Mr. Hartigan, the boss at that time, for a job. I waited a couple of days and he gave me one. I got a job shilling. At

that time I worked in the night time. I worked at the Lincoln Tavern until it closed. Jim Hartigan was my boss all that time. I didn't know a soul at the Lincoln Tavern at that time. When I left the Lincoln Tavern I went to the Horse Shoe, Kedzie and Lawrence. That is when they opened in the city and the word went around that all the boys that worked there could go to Kedzie and Lawrence. I saw Jack Sommers at Kedzie and Lawrence. I was employed there. At that time I took care of a cigar stand they had there. It was in a little room off where the gambling was. It was a check room they had. I worked there until the time that that place closed, and went some place else. We next moved to the Harlem Stables. I couldn't swear to the exact date—I just remember off-hand what time it was. It was approximately about a year afterwards, after the time I started at the Lincoln Tavern in '36. This would be in '37 when I went to the Stables. My boss at the Harlem Stables was Jim Hartigan—no one else. I was a shill out there. I did become a dealer. I went to school at Kedzie & Lawrence. Nobody in particular sent me there. They had the word around, if we wanted to attend that school we could. That is, those working in the places. I did go there. I only know the name of the one who taught at that school as "Toad". That is what they called him. I went to school approximately three and a half weeks. At that time it was located at the corner store that used to be a spot for the 521 buses to pick up people, at Leland Avenue. I was working at Kedzie and Lawrence at the time I went to this school.

I worked at the D. & D. after I went to this school. I went back to the Harlem Stables again. I didn't work at any place else besides the places I have mentioned. I did work at the House of Niles. I ceased employment in September, 1939. I was working at the Harlem Stables at the time. All the time that I was working at these different places I was paid every day in cash.

I know the defendant William Kelly. I first met him at the D. & D. I didn't see him any place else. When we closed he went from the city to the Stables. He was my boss out there, approximately two and a half or three months. We were at the Stables last—that was last summer. I was working days at the time. I didn't work nights in that same period.

Cross-Examination by Mr. Thompson.

When I went to school on Kedzie I was working at the Horse Shoe Club. All the people going to that school were not employees of the Horse Shoe. Some of them were from the Horse Shoe and some were from other places that were open at the time or had been open. I could not say exactly how many were there who were employees of the Horse Shoe—I never paid much attention to that. The boys that were shilling at these different places attended this school. The man's name who was teaching was "Toad". He was a heavy set fellow. He taught all the time I was going there. The instructions were, just had the chips, and learned the different lay-outs, that is all, of an ordinary crap table. I never did know the layout of a crap table before I went to this school. I just hung around there, playing keno at the Lincoln Tavern, and I asked Jimmy if he would give me a job. I was pointed out he was the boss. He told me to wait a couple of days—he would give me a job. I had no 522 such thing as a political sponsor. I went to this school about three and a half or four weeks. I went to work at the Horse Shoe when it opened up, but not dealing—I didn't go to work right away—I still was shilling. As they needed a dealer I got an opportunity. I worked as a shill at the Horse Shoe Club and I worked as a dealer at the D. & D. Club. I commenced there about two or three weeks after they first opened up, the first time at the D. & D. I would not swear when that was. That was the time when they closed one place and we went to the D. & D. They closed the Harlem Stables and I went to the D. & D. I went back to the Harlem Stables from the D. & D. When the D. & D. was operating the Harlem Stables was not operating. I know that, because everything was open in the city at that time. When everything was open in the city the country places did not operate, and when they closed up in the city then the country operated. It is hard to say how often they alternated—I wouldn't swear just to the exact length of time—just seemed to go along for months, maybe a year, at a time, and then they would close. All the places in the city would not close at one time. Maybe one every other time, not all on the same day—maybe the rest of them would close the following day. It was when they all closed in the city that they all moved out into the country.

I never worked at the Dev-Lin. I did at the Harlem

Stables. I never worked at the Club Western. I never knew all the places. When I worked at the D. & D. Mr. Kelly was the proprietor, no other man in charge except Mr. Kelly. When he closed up downtown he took whatever business he could out into the country. He would give us what work he could. I only went with him one time to the Harlem Stables from his club downtown. That is the only time I knew what happened to Mr. Kelly. When he got closed up in the country everything stayed closed at that time. I never went back from the Horse Shoe to the 523 Lincoln Tavern. I only worked at the Lincoln Tavern once—that is the last time it closed. It has not been open since. I worked at the Harlem Stables the last time it closed. Neither one has been open since. I never went back. I went to work some other place. I am managing a valet shop at the Webster Hotel. I have not worked at a gambling house for the last six months. The last time I worked in one was at the Harlem Stables, when it closed about September 15, 1939. I have not been in any gambling house since 1939. I worked three short shifts at the Casino Club. I would not know, off-hand, exact dates. I just went over there and wanted a little extra work and if they had it they gave it to me. I worked three short shifts. There was a long shift, that was a full shift—we got \$7.00 pay and on a short shift we got \$5.00 pay, dealing craps. I worked in gambling houses on and off about two and a half years. Prior to that I was in the cleaning business. I was not in the cleaning business while I was working in gambling houses. I went out and got a job in a gambling house because I was out of employment.

I have told you all I know about my employment in these gambling houses. I was not paid by the same man in each place. At Kedzie and Lawrence I was paid by a fellow named Charley and at the Stables and at the D. & D. by the name of Mack. I don't remember the fellow's name at the Lincoln Tavern. And at the Casino by a girl. I didn't know her name, because I didn't go there often enough to know it.

DAN WOLFSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Dan Wolfson. I live at 7725 Marshfield 524 Avenue, Chicago. I am employed by the Illinois Tax Commission. I was employed in a gambling house in Chicago, in the Horse Shoe, 4721 North Kedzie Avenue. I got my employment February until September, 1939. Prior to my employment at the Horse Shoe I had a cigar store at Kedzie and Lawrence. That is in the vicinity of the Horse Shoe. I was out of work at the time and I tried to get employed up there and I went to William Johnson, whom I have known for about twenty-five years, and asked if he would not recommend me. I saw him in the restaurant. He told me to see him in a couple of days. I saw him about a week or ten days later in the restaurant. He picked up the telephone and called somebody and about five minutes later he said I should go upstairs and see what they could do for me. I went upstairs into the Horse Shoe gambling room. I saw James Hartigan. I told him I was the one that was sent up there, and if he could do anything for me to put me to work. He said I should come back the next night. I started work then, shilling at the table. I was there until September 1st, in the same building. I was working three or four nights a week. From September 1st on I worked at the Dev-Lin on Devon Avenue. I was told when I came down to work at the Horse Shoe they told me to go over to the Dev-Lin because this place was closed down. I worked at the Dev-Lin one month as a shill. James Hartigan, and I think Jack Sommers, was my boss out at the Dev-Lin. I worked at the Harlem Stables two days, I think. They sent me over there. I think it was during the month of February when I first started. James Hartigan sent me over there a couple of days. I asked the manager of that place to see if I couldn't get back at the Horse Shoe because that was too much traveling for me. I think it was a fellow by the name of Bartel. I always worked nights during this period. I don't know who the day boss was of the Horse Shoe. I was paid every night, in cash, by the man who had charge of the payments. He was the pay-

master. I made Social Security payments every night.
525 That was taken off at the time we were paid. There was a man who took care of that. His name was Charley—I don't know his last name. It is not the same Charley who was at the Harlem Stables, the Horse Shoe and the Dev-Lin. Charley was at the Horse Shoe. I don't know what his name was. I don't know who the man was at the Harlem Stables. I didn't work at any place else besides these three places.

I know the defendant, Sommers, for about three years. I saw him in the cigar store. He was around the neighborhood. He used to come into the store once in a while and buy cigars before the restaurant was open. I have never seen him any place except my cigar store and up at the Horse Shoe.

ARTHUR CORBIN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Arthur Corbin. I live at 3957 Irving Park. I was employed at the Harlem Stables the first part of '37 as a driver. The first part of the year I was working on a construction gang on the West side of town, and some of the fellows over there asked me why I didn't go over and get a job, because I had an automobile, so I did. I went over and tried to find out who was the boss and found out that Hartigan was there. It took me about three weeks before I could catch up with him and ask him to put me on, and it took me a couple of weeks after that before he put me on as a driver. I drove my car taking people up there. I drove from Irving and Cicero. That was the place they sent me to pick up people—told me to go to the fellow out front and he would tell me what to do. Lou
526 Block was the name of the fellow in front. I don't know exactly in front of what. I am acquainted with the premises there in front of which he was standing. I was not before that. It was just an empty room, to get off the sidewalk; the drivers sitting in there and Lou Block would be in there. There wasn't any gambling club open then. I don't know of any before that. After I got to

Cicero and Irving I would report to this Lou Block. I guess I was there two or three months. My hours from eight in the evening until three in the morning. My duties were to drive to this point where Lou Block was standing. The people that I put in my car came over there. There was not any bus service running at the same time. When my car was full of people I took them to the Harlem Stables. Then I would go back to Cicero and Irving. I made about three or four trips a night between those points. I did drive from other points besides Cicero and Irving. I drove from Kedzie and Lawrence to Harlem Stables. I can't say the exact period of time—I imagine at least three or four months. That was in '37. Lou Block told me to go over to Kedzie and Lawrence. I was switched around three or four times—I don't know the exact time I was there, but I would say I drove from Kedzie and Lawrence to Harlem Stables three or four months. Wherever I happened to be driving they told me to go from that place over to where I was sent. I picked up people from Wilson and Broadway to Division and Dearborn. The man who gave orders at Wilson and Broadway was Dave Windsor. I didn't always make a stop at Kedzie and Lawrence, as you go from there to the Stables, unless some people wanted to stop out there. While I was driving at the Stables I was paid \$7.00 a night. I paid my own gas and oil. I was paid every night in cash. The fellow out in front at the Harlem Stables paid me—I don't know who he was. I know they called him Bud. Whether I stopped at Kedzie and Lawrence depended on whether or not the persons in the car wanted to play Keno or dice. 527 Keno was being played at the Harlem Stables. Dice was being played at both places. I drove to Lincoln and Devon, at the Dev-Lin. I took people there from Kedzie and Lawrence and go over to Wilson and Broadway. I didn't make any stops on the trip there. One afternoon I made a trip out to the House of Niles, at the request of Lou Block. I was stationed at Cicero and Irving at the time. I don't remember who changed my route from Wilson and Broadway to Kedzie and Lawrence; or who changed that over from the Tessville address, Dev-Lin. I don't remember whether it was Dave Windsor or Joe Barnes. They were the men standing at the corner of Wilson and Broadway. At the time I drove from Wilson and Broadway to Harlem Stables I know that there was a

bus running there also. It was running from Wilson and Broadway and stopped at Kedzie and Lawrence, and then went to the Stables. I don't know how often it would run—it would go before we did and then we would go out. I wouldn't see it any more. As to the hours just when it went I don't know. They left about 8:30 in the evening and between buses I drove my car out there. I drove to Division and Dearborn. I think Bud at the Stables told me to go down to Dearborn and Division one night and then I drove from there for quite a while.

I saw Downey at Division and Dearborn. I know his nickname, "Wooz"—I don't know his first name. I drove from Division and Dearborn to the Stables. I wouldn't make any stop anywhere. Off and on, I was driving from the Stables two and a half years. They closed up. When they opened again I would go back to work. I was down at Division and Dearborn most of the time. I used to pick up people four nights from 4020 Ogden Avenue to the Stables at the request of Downey. I had been working in the D. and D. prior to that. 4020 Ogden Avenue was not going at that time. I did not make any stops anywhere from 4020 Ogden to the Stables. I picked up people from Howard Avenue L. Station. I took them to the Stables. I couldn't tell you how many cars were engaged in that type of business—I know there was at least fifteen or twenty. Those were the ones I would see going into the Stables.

I know Jack Sommers. I met him at Kedzie and Lawrence and at the Stables. He was just outside, talking to some fellows at the Stables. I never received any orders from him. I had no reason to go inside to see him there.

Cross-Examination by Mr. Thompson.

I am selling insurance now, not driving for any gambling houses. It is about a year since I have. I didn't go into these gambling houses when I was driving back and forth. I received no orders from Mr. Johnson in connection with this.

Mr. Thompson: We move to strike the testimony of the witness as in no way connected with the defendant W. R. Johnson and not proving or tending to prove the taxable income of W. R. Johnson in the years alleged in

the indictment, and having no connection with proving any scheme to evade payment of taxes on taxable income for those years.

The Court: Denied.

HENRY GREENWALD, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Henry Greenwald. I have been employed in a gambling house. I was first employed in 1934 in the Southland Club at 63d and Cottage Grove as a doorman. Andrew Creighton gave me my job out there.

I worked at the Lincoln Tavern, the Dev-Lin Club 529 and Harlem Stables, 97th and Western and House of Niles. I recall working at the D. & D. Club. I recall working at the Horse Shoe.

I worked at the Southland Club about a year when I was first employed there. I worked at the Dev-Lin when I went there. I met Mr. Creighton at the Dev-Lin. I don't know how I was employed at the Dev-Lin Club. Mr. Sommers, I believe, was my boss there. I was night watchman at the Dev-Lin. My hours were from four in the morning until noon time. I was inside. There was another night watchman working there when I was, about three others. I don't remember how long I worked at the Dev-Lin. It was probably four or five months. From there I possibly went to the Lincoln Tavern. I worked there as a night watchman at the same hour. Mr. Hartigan, I believe, was my boss at the Lincoln Tavern. I don't know Mr. Hartigan. I don't remember who paid me. I was paid when I went on duty at four o'clock in the morning. The place wasn't open when I came on duty, but the envelopes were there for us. We were paid every night.

After I left the Lincoln Tavern I think I went back to the House of Niles as a night watchman, the same hour. I don't remember who sent me there, but we were all sent there. I don't know where I went after I left the House of Niles. My best recollection is the Harlem Stables. I don't know who sent me to the Harlem Stables. I was

told to go there, but I don't remember by whom. I was employed at the Harlem Stables probably another year or seven or eight months, I believe, at one stretch of time. I was a night watchman there, the same hours, the same pay. When I left the Harlem Stables I went back to the Southland. I went of my own accord. I spoke to Mr. Creighton of the Southland. I just asked him for a job and I got it. I was a doorman at the Southland.

I went to work at the D. & D. about three weeks in 1938,

I believe, as a doorman, from eight at night until 530 three in the morning. Mr. Kelly was my boss at the

D. & D. I was an inside doorman of the inside room, right at the door leading into the room. My duties were to open and close the door. That is all I did. I worked at the Horse Shoe the latter part of 1936, as a night watchman. I was paid in cash every night at all these places that I worked.

Cross-Examination by Mr. Hess.

My first employment was at the Southland by Mr. Creighton about 1934. Then I went to some other place when the Southland closed. Mr. Creighton did not employ me to go to these other places. I don't know how I got in. I knew there was some other place open and I went to get a job there. That is true of all of the places other than the Southland.

H. E. WHEELER, recalled as a witness on behalf of the Government, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Miller.

I testified before, about two weeks ago. I testified that I was the President of the Air Comfort Corporation. My company had occasion to install equipment at the Bon Air Country Club at Wheeling, Illinois, in 1939. It was air-conditioning equipment. We charged approximately sixteen thousand three hundred dollars for equipment and services performed at the Bon Air in 1939. We were paid by check by the Lightning Construction Corporation.

about \$11,000.00, and the balance we were paid in currency, at the Bon Air Country Club, by Mr. Geary.

Government's Exhibit E-102, for identification, is a 531 sheet from our ledger covering the Bon Air Club account. This is part of the permanent records of the Air Comfort Corporation. It is kept under my supervision and control. The entries made on this sheet were made in the regular course of business. The entries on this record reflect the transactions at or about the time they occurred.

Mr. Miller: I offer at this time Government's Exhibit E-102.

Cross-Examination by Mr. Thompson.

According to this record the first payment on this contract was made April, 1939. The day doesn't seem to be entered here. It was made by check of the Lightning Construction Co. There was a second payment in April the same year. I don't have the date there. It was paid by check from the Lightning Construction Co. I recall that, for one thing; and I think we have records to show it. I think we have the envelope in which it came, the notation made on it. We make a practice of keeping all envelopes in which we receive payments.

This is our ledger of entry, in which we put down receipts, money received on any particular job. It is not our day book or cash book, where we make our first entry. The bookkeeper makes the entry in this book. I don't know positively where the bookkeeper gets the information which is put in this book. The third payment was made on May 4th, by check. I recall that it was, and I think that our records will show it. I see the money of payments. The cashier of our office receives them. If it is a substantial amount the cashier brings them over to me and shows them to me. I do have a recollection of having seen these two checks come in. I had not checked the financial standing of the Lightning Construction Company before I made this contract with them. We 532 talked with the architect, Mr. Nadherny. I had not known him before. I did not ask him anything about the credit of the Lightning Construction Company. We did not hear of the Lightning Construction Company until the contract had been practically ready to be agreed upon. Then we were told to make it out to the Lightning Con-

struction Company. Mr. Nadherny told me that. We didn't ask him who they were. We didn't make any check of its financial standing.

The first payment of \$6,121.46 was paid to us at the same time our truck delivered some equipment there and before it was unloaded, so on that transaction I don't think we extended any credit up to that point. Our steam-fitting foreman received a check. He was there to meet the truck. He delivered the merchandise and took the check. It was drawn on some bank in Deerfield. I didn't check with the bank to see whether the check was good. I just put it through in the regular course. My luck was that it came through all right. I hadn't, up to that time, checked to see whether the Lightning Construction Co. had any money at the bank or not.

The next two checks were for partial work as it progressed, and merchandise, both. The first delivery was merchandise. Up to that time I had this merchandise manufactured for this job. I had not checked into the financial standing of our customer at all up to the time I had manufactured the product. Then we moved it out there and installed it.

We billed the Lightning Construction from time to time and it paid us. The fourth payment was made in currency. I recall it because I collected it myself. It was some small bills—they were of various denominations, as high as \$5.00. Mr. Geary gave them to me. He was at the Bon Air Club and the room is like an office. Mr. Love was there at the time. He is a superintendent, I believe, at the Lightning Construction Company; and we take orders from him at the

Lightning Construction. He was head of the construction work out there. Roy Love is what we call the

General Contractor. This four thousand dollars was handed to me personally. I believe it was the first time I was at the club. I may have been there once before. I made no collection prior to this. My occasion for going out there on this trip was we had a balance due of about five thousand, five hundred, approximately, as near as I can recall, and there were some small items in dispute, and they had certain credits coming to them. They wanted to talk to someone with authority to either allow or disallow those credits, so I arranged by telephone to meet Mr. Geary there this particular night, and after we had talked a few minutes he asked Mr. Love to come upstairs. He was evidently in

some other part of the building. We discussed these credits and agreed on them and then, I believe, Mr. Love left at that point and Mr. Geary said, "Well, we will pay you four thousand dollars now", and handed me the money. That is, as a partial payment, and asked me to count it, and I did. As it happened I gave it back to him and asked him to give it to the Brinks Express the following day and to put it in the envelope. I didn't carry it with me. It took me probably ten minutes or so to count this four thousand dollars. After I counted it I handed it back to Mr. Geary. He agreed to send it in by Brinks Express. He asked me to sign a receipt for it, which I did.

The Club was operating at that time—I think it was about nine o'clock at night. Mr. Geary was the only one I saw there that I knew, excepting my small talk with Mr. Love. He was the only one I talked to about this job. \$146.00, as I recall, were allowed in credits. That is indicated on our ledger there. I don't know of or recall any other credits indicated on our ledger account. This symbol, C-1199 refers, I believe, to a voucher number and that voucher, I presume, contains the credit memo which was issued at that time. I believe the other symbol, "C. R." 534 refers to remittance. Credits on the cash receivable ledger. The symbol C-1199 is a voucher number. That is the credit memo I spoke about. These other two symbols S-105 and R-39, I do not know what they refer to. They are in the same column as remittances, yes. We were paid approximately \$16,300 for this job. This totals \$16,362.49, and there is an additional journal entry of \$1123.75, which is entered twice, once in error. That accounts for that extra \$110.00 on that exhibit. I believe that \$16,362.00 is the actual cash we got. That is inclusive of the \$146.00 credit. The items, \$18.00 and \$47.90, I think are probably service items that occurred later. By glancing at the column you can tell that the \$146 credit is included in the \$16,362.00 total, so that is the total credit, including the merchandise, adjustments, and so on, cash payments and everything else.

Mr. Thompson: We object to the document as immaterial; no proper foundation has been laid for it; does not tend to prove the income of the defendant Johnson; hearsay as to him.

The Court: Overruled.

(Said document, so offered and received in evidence, was thereupon marked GOVERNMENT'S E-102.)

FRANK MATTHEW BROWN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Frank Matthew Brown. I live at 1656 South Karlov Avenue. I was employed in the Horse Shoe gambling house of Chicago about six years ago. I got the job through my brother. I spoke to Tom Barnes with reference to a job. I got a job there shilling. I worked 535 there about six years. I was in a lot of other places in those six years. I went to the Dev-Lin, Harlem Stables—I don't remember how long I was at the Harlem Stables. It was for a short time a long time ago. Pete Riley was my boss there at the Harlem Stables. I don't remember what year that was. It was not last year—it must have been three years before that—maybe longer than that. When I was working there I got a transfer to go back to the Horse Shoe. I spoke to Pete Riley about the transfer.

Mr. Thompson: We move to strike the testimony of the witness; not material to any issue in this case.

The Court: Motion denied.

FRANK SINGER, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Frank Singer. I live at 1554 South Albany, and know the defendant, William R. Johnson. I met him at a paper stand I used to run at Madison and Dearborn, about four years ago. I would see him every time he would come up to buy a newspaper, for a period of about six months.

Q. Did you have a conversation with him?

A. I asked for employment.

Q. What was his answer:

A. Well, he kept stalling me off.

536 Q. Did he ever give you employment?

A. Well, he did, once.

Mr. Thompson: We object to the suggestive questions and leading the witness.

Mr. Plunkett: He testified he asked for employment.

Mr. Thompson: Yes, but let's have the conversations and acts; not conclusions.

The Court: Sustained. Ask him what was said and done.

I told Mr. Johnson I was down and out and I would appreciate it if he would be able to do something for me. He didn't say anything for a while. About a week or so later I asked him again. He didn't answer me—just went away. I don't know when was the next time I spoke to him—he didn't come around often—it was about a month after the second time. I told Mr. Johnson that I was down and out, needed employment, and he recommended me to Mr. Som-

mers. He told me to go see Mr. Sommers. I don't
537 remember that he gave me anything at the time he told me to go see Mr. Sommers. I did go to see Mr. Sommers at the Horse Shoe Club. That was a day after Mr. Johnson told me. I can not fix the time of this last conversation with the defendant Johnson. It was approximately about '36. I don't know what time of the year it was. When I went to see Mr. Sommers I asked for a job. I told him I was badly in need of work. I don't remember if I had a card—I might have had one.

Q. To refresh your recollection, did you have a card in your hand which said, "Please put bearer to work as a shill"?

Mr. Thompson: We object to any suggestions to this witness.

The Court: Overruled.

The Witness: I don't remember if it was. I don't remember if it was a card, or anything.

I recall being in this building on or about the 8th day of May, 1940. I don't remember who I talked to at that time. I talked to somebody—I don't know who. I was questioned about some of the questions I have been asked now. I don't remember that I made a statement that I had a card in my hand when I went to Sommers. I don't remember the defendant Johnson having given me a card at that time. I recognized my signature on that (exhibiting document to witness). That is my signature. I did affix my signature to this document. I didn't read it before I did that. I went to work at the Horse Shoe as a shill. I worked there on and

off about two years, about 1937. I worked at 4020 Club at Ogden and Crawford. I asked Mr. Sommers to please transfer me there. That was after the place opened. I cannot fix the year. The 4020 opened about three or four months after I went to work at the Horse Shoe. When I asked Sommers to transfer me he asked me why and I told him I wanted to be near my home. Nothing else was said. I went to 4020 the next day. I saw Mr. 538 Planagan at 4020. I told him that Sommers sent me there. He made no answer to that. He put me to work as a shill. I worked at the Harlem Stables, one day when the Horse Shoe was closed. I worked at the Harlem Stables as a shill. That was after 4020 Ogden closed. I saw Mr. Sommers to get employment at the Harlem Stables. I saw him at the Harlem Stables. We were open for about five months at 4020 before I went to the Harlem Stables. I can not recall any conversation between me and Sommers at the time I went to Harlem Stables. Mr. Sommers told me to go to work as a shill. I worked there four or five months, sometimes days and sometimes nights. When I was working in the daytime at the Harlem Stables Sommers was my boss. The defendant, Hartigan, was my boss in the night time. He was boss of the place that I know of. I did not work anywhere else besides Harlem Stables. I was at the House of Niles after the place was closed down. After I left the Harlem Stables I was completely out of work. That was around '38. It was after that when I went to the House of Niles. I saw Mr. Sommers there. I don't think I had a conversation with him. I don't recall what he was doing when I saw him at the House of Niles. The cashier paid me when I was working at the Harlem Stables. I knew him as Mack. He stood up in that cashier's cage. Mack Olson paid me while I was working at the Horse Shoe, the same Mack that I referred to at the Harlem Stables. I was paid every night in cash. The person I have been referring to as Sommers is the defendant, Jack Sommers.

Cross-Examination by Mr. Thompson.

I have been unemployed since the place was closed last September. I think I was down at this building talking to Government representatives prior to this May meeting to which Mr. Plunkett has referred. I first came down 539 here to be interviewed around August, 1940. I was down here in May. That was the first time. I guess

I talked to Mr. Sommers the first time I came down. The agent who is sitting there by you. I don't recall anyone else present while I was talking to Mr. Sommers. I guess there was more than one person in the room. I don't know who that was. I don't know if it was Mr. Converse. I never paid any attention to the other person. Two persons were in there—one of them was Mr. Sommers. I got a letter to come and see him. I don't know who furnished my name. The first knowledge I had I might be wanted as a witness was when I received this letter. I responded to the letter. I came into the building at the time I was asked to come in. While I was being questioned answers were being written down on a piece of paper—I should say that interview lasted about twenty minutes. During the interview I was pressed to say that Mr. Johnson gave me a note. I don't recall whether or not I was also asked to say that he hired me to go in this job. I went through that interview and signed a statement. I was next brought back to the building in August. I was not here between May and August. I was not before the Grand Jury. I was asked to come in the building in August by letter. I have got that letter here. I guess it was Mr. Campbell, and the letter asked me to report in a certain room. I have the letter in my pocket. (Document examined by witness.) It was a letter I received August 10th, telling me to come to Room 450. I received that on August 10th and I responded to that letter and when I came here to Room 450 I guess I saw Mr. Plunkett. I talked about twenty minutes to him. I was shown this written statement. I did not read it over. Mr. Plunkett talked to me about it. I didn't come back for another interview. That is the last time anybody talked to me about this. I have been waiting two days to be called to the stand. Nobody talked to me during that two days.

540 I have told you all about this matter now.

I was running a news stand down here and Mr. Johnson used to patronize my news stand. I have not known him long. The fellow I worked for is the one that told me it was Mr. Johnson. I hadn't known Mr. Johnson—I was just an employee of this news stand. He said to me, "That is Bill Johnson." Then I asked Mr. Johnson if he knew where I could get a job. He did not respond. Then I told him later that I was terribly hard up—I needed a job. I kept pressing Mr. Johnson to give me a job for about eight months. Then, he finally told me to go down

and see Jack Sommers. I did not know Jack Sommers at the time. I went down there and talked to Mr. Sommers. I told him how hard up I was. I don't recall all I told him about my experience. I have been shown the way the other fellows do. I knew how to shoot craps before I went there. I knew how to play poker before I went down there and so I was put to work as a shill, four dollars a day. I got my pay every day. I first went to work for Sommers around 1937, I guess. I don't remember the date, but I recall the years. It was during the summer, I guess. The Social Security tax was already in effect when I went to work there. I paid my Social Security tax every time I got my pay. Some fellow by the name of Mack collected the Social Security tax and paid me my money. I don't know what his other name was—he was kind of a short, skinny fellow. He paid me all the time I was working at the Horse Shoe. After I finished working at the Horse Shoe I went to the Harlem Stables. That was because the Horse Shoe closed up, and when it closed up all us fellows went any place we could find another job. I was not sent by anybody from the Horse Shoe to the Harlem Stables. I saw Mr. Sommers there, the same Mr. Sommers that used to run the Horse Shoe. I asked him for a job. He gave me a job, the same job, \$4.00 a day, less my Social Security.

The total pay I got was \$1056.00. They took 4¢ a day
541 Social Security tax. I think it was the same Mack that handled that matter out there—that is when the Horse Shoe closed he went out to the Harlem Stables and had the same job.

I worked at the 4020 Club. That was after I worked at the Horse Shoe. It was after I worked at the Harlem. I was then working again at the Harlem—the Harlem had been closed. I saw Mr. Flanagan to get a job at the 4020. Sommers told me to see him. I wanted a job from Mr. Sommers. He told me to go see Flanagan, if I could get one at the Flanagan place. Mr. Sommers was running at that time, but he didn't have any work for me, so he told me I might get a job if I went over to the 4020. I went over there and saw Flanagan. He put me to work shilling. I was working on the ground floor. I worked there until they closed—I don't recollect the time they closed. The cashier took the Social Security tax, and paid me there—I don't know his name—It was not Mack. I didn't work anywhere else. These were the only two places, and when

the 4020 was closed in September of '39 that is the last work I have done. I did not have any political sponsor for these jobs.

HERMAN VAN SPANKEREN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Herman Van Spankeren. I live at 2844 North Kolmar Avenue. I had occasion to do gambling in houses in Chicago. I gambled at the D. and D. Club, Horse Shoe Club, Dev-Lin Club, and the Harlem Stables, during the period 1936 to 1937. I guess just those two years. I played in all these clubs. It was in February '38, I believe, when I stopped gambling. I have played at the Lincoln Tavern and 4020 Club occasionally. I don't believe
542 I can name any more.

I know the defendant Jack Sommers. I know the defendants, Kelly and Mr. Hartigan. I believe that is all.

I saw the defendant Sommers on April 7th, 1939, after I had stopped gambling, at my home. A chap by the name of Ryan was present. That is all.

Q. And what transpired between you and the Defendant Sommers on that occasion?

Mr. Thompson: We object to that, if the Court please. We would like to ask him to advise the Court what the proof is going to be.

(The following proceedings were had out of the hearing of the Jury.)

Mr. Plunkett: We intend to show by this witness at the conclusion of his gambling activities that he sustained a large loss and that he filed a suit against Sommers, Hartigan and others of these defendants and that Sommers came out to his house and settled the law suit by giving him a certain amount of cash and a job.

The Court: He started a law suit against whom?

Mr. Plunkett: The law suit was against the Defendants Johnson, Sommers and Hartigan, and there are others named. I do not know exactly who they all are.

Mr. Thompson: I do not see how that can possibly have

any bearing on the question of income anybody had or with respect to income taxes;

The Court: The question may have a bearing on the question of ownership. Objection overruled.

Mr. Callaghan: And a further objection, if the Court please, that these conversations cannot be any conversation in furtherance of the conspiracy charge in this indictment.

The Court: Overruled.

543 (The following proceedings were had in the hearing of the Jury.)

Mr. Plunkett: Q. Will you answer the question?

A. Why, we discussed the settlement of the law suit.

There was a law suit pending at the time. It was a law suit for the recovery of gambling losses. It was filed in the name of my mother-in-law. They were my gambling losses.

Q. In what amount were these gambling losses?

Mr. Thompson: We object to that as immaterial.

The Court: Overruled.

A. Approximately \$16,000.00.

Mr. Plunkett: Who were the parties defendant to the law suit?

Mr. Thompson: I object to that as immaterial.

The Court: Overruled.

The Witness: The parties defendant in the lawsuit were William R. Johnson, Jack Sommers, William Kelly, James Hartigan and Peter Riley. Mr. Sommers asked me to see him at the Horse Shoe Club that evening, which I did. There was a conversation between me and the defendant Sommers at that time. Mr. Elmer Johnson and my wife were present. Mr. Sommers asked me what I wanted and I told him I hadn't thought about it. I hadn't definitely decided, and he made me an offer, and I accepted it. He offered me a thousand dollars in cash and he promised to obtain a position for me—some political appointment. I did accept the offer. I did not get the position at the time.

I next saw the defendant Sommers a couple of weeks
544 later at the same place. No one else was present.

There was a conversation between us then—I believe I asked him when I would obtain this position and he wasn't certain just when it would come—it would take time. That was all that was said on that occasion.

I saw the defendant Sommers after that on numerous times. I next saw him a few weeks later at the same place

—no one else was present. I believe the same thing was said on that occasion.

I finally saw him at the Dev-Lin Club and he put me to work there. I didn't do anything, I guess—just stayed around the outside of the building—didn't do any work that I was aware of—I was paid \$4.00 a day. I was supposed to park automobiles, but they had another fellow doing that, so I didn't do anything. I worked there from July 7th until September 25th, 1939. I didn't work for him after that.

I never got any more money.

I had a conversation with John Elmer Johnson in Sommers' presence.

Q. What was said between you and John Elmer Johnson on that occasion?

Mr. Thompson: Objected to on behalf of all defendants. Mr. J. E. Johnson is not a defendant.

The Court: Overruled.

The Witness: Mr. Sommers offered me this settlement and Mr. Johnson suggested or said that he would see what he could do about obtaining this position for me. I didn't have any prior conversations with John Elmer Johnson that I refer to in the presence of any one else. That is the only time. That is all that was said by him on that occasion.

545

Cross-Examination by Mr. Thompson.

I was a fleet operator in the Checker Taxi Company before I started gambling at the gambling houses. I was in that same employment during the period that I was doing this gambling. I started to gamble in the latter part of '36, I guess. I had gambled prior to that occasionally, many years ago. I first gambled in Chicago at the Harlem Stables. Some one suggested I go out there one night with them and I did, much to my regret. It was not any of these defendants. They had nothing to do with enticing me into their gambling houses. I went there voluntarily. I didn't make any holler about losing my money during the period of my gambling. After it was all over my mother-in-law filed suit against this group of people that ran these gambling houses. She thought they were running the different gambling houses where I lost my money. She got the names of the people that she brought suit against from me and I gave her the names of all the

folks that I thought ought to be sued, or that she thought ought to be sued—I don't recall which it was. I was not living with my mother-in-law then. She was not living with me.

After these people were sued my lawyer contacted them and undertook to settle the case. My lawyers were William Helfand and Samuel Morris. William Helfand actually handled the case. He didn't contact any one personally, to my knowledge. All I know is what he reported to me.

John Elmer Johnson whom I speak of is a lawyer. He is not one of the defendants I sued. He was acting as a lawyer when he was discussing this case with me. In this discussion with him and his client, Mr. Sommers, I finally arrived at a settlement of \$1000. Nobody else was present except me and my wife. My mother-in-law was not there. She did sign a release. No one else was plaintiff in that case except my mother-in-law. The suit was for \$45,546 000. It was brought under the statute which provides for recovering triple damages for gambling losses. If you lose fifteen you sue them for forty-five. That is what I did, but I took \$1000 in settlement, and that \$1000 was paid by Jack Sommers. None of the rest of the defendants paid me anything.

John Elmer Johnson told me there that William R. Johnson had nothing to do with the matter. He told us he was only there to eliminate his brother from the proceedings. After I got this settlement of \$1000, I also got a promise of a political job, and Mr. Johnson said he would do what he could to help me get it. That is Mr. John Elmer Johnson I am talking about.

I never met William R. Johnson. I didn't gamble with him when I lost any of this money. I didn't get the political job. I didn't try to get one. I was told they tried. I didn't get it and they gave me a job then in a gambling house, and I worked there for Mr. Sommers until the gambling house closed in September, 1939.

John Elmer Johnson told me that he would see what he could do to help get me a job.

Mr. Thompson: We move to strike all the testimony respecting this transaction, your Honor, as far as Mr. William R. Johnson is concerned; it is all hearsay as far as he is concerned; no connection with what his taxable income is or whether there is any conspiracy to evade taxable income.

The Court: Denied.

547 E. RALPH KAUDERS, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. E. Riley Campbell.

My name is E. Ralph Kauders. I live in Chicago. I am a cotton broker. I have had occasion to visit places some time known as the D. and D., the Horse-Shoe and the Dev-Lin, over a period of two years, '38 and '39. I visited those three places at least a dozen times. I played dice in the D. and D. There was roulette games going on. I went there in the evening. The room was larger than this one. I saw substantially the same thing at the Horse-Shoe and about the same thing at the Dev-Lin.

In the course of this experience I came to know someone at these places just by nicknames. I did have occasion to give my personal checks in the course of my experience. They were drawn on the American National. I only save my checks until the first of the fiscal year. I don't have any checks beyond the first of January, 1940. The checks are destroyed, which is the natural thing for me to do.

Q. What was the range in amounts, if you remember?

Mr. Thompson: We object to all of this as immaterial, Your Honor.

The Court: Overruled.

The Witness: The range was, well, up to several hundred dollars. I occasionally looked at the endorsements on the back of those checks after they were returned to me by the bank.

Mr. Thompson: I object to this as calling for oral proof of what was in writing.

Mr. Campbell: They have been destroyed, Your Honor.

The Court: Overruled.

Mr. Thompson: We didn't destroy them.

The Witness: There was an endorsement stamped on the back of the checks.

548 Mr. Campbell: Do you recall what that endorsement was, that stamped endorsement?

Mr. Thompson: We object to that. No proper foundation, no connection with any of these defendants by any proof.

The Court: Overruled.

The Witness: There was a stamped endorsement that showed "Lawrence and Kedzie" something. I don't recall

exactly what the full name was. I how it was Lawrence and Kedzie. It was a stamp of a bank or a currency exchange. It was "Lawrence and Kedzie Currency Exchange", some such name.

Q. To refresh your recollection, wasn't it—

Mr. Callaghan: This is all objected to, Your Honor. The United States Attorney has not even seen these checks. He can't refresh his recollection on something he has not seen.

The Court: Overruled.

Mr. Campbell: To refresh your recollection, was it the Lawrence Avenue Currency Exchange, Mr. Kauders?

The Witness: I wouldn't recall the exact phraseology. I don't know, but it seems to me it was Lawrence and Kedzie Currency Exchange, or some such name.

I did visit the Bon-Air Casino at the Bon-Air Country Club three or four times during the summer of 1939. I see one gentleman in the court room now who was pointed out to me on one of those occasions (indicating the defendant Johnson). He was just generally looking around the room.

I did not give checks at the Bon-Air Casino.

Mr. Thompson: We move to strike the testimony of the witness, as in no way tending to prove any taxable income of the defendant Johnson, or any attempt to evade payment of taxes on taxable income.

The Court: Motion denied.

549 RUTH WAKEFIELD, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Ruth Wakefield. I am employed by the Internal Revenue Agent in Charge, in Chicago. I work at the office at 105 Adams Street. I have been employed in that department five years as a stenographer. I had stenographic work before that for about fourteen years. I had high school education and then a business course as to stenographic work. In my course of training I took stenography and shorthand and I have been practicing shorthand and doing typewriting over a period of fourteen years.

I have, in the course of my work, had occasion to take

statements where questions were asked and answers were given. I have done that on many occasions. I had occasion to take a statement on March 27, 1939. I took Mr. William Johnson's statement. I see Mr. Johnson here. That is the same man whose statement I took at that time. Mr. E. Riley Campbell was present when that statement was taken and Mr. Lewis Wilson and Mr. Frank Clifford. That statement was taken in Mr. Wilson's office, in the agent's office up there.

There were certain questions asked at that time and place. There were certain answers given to those questions. I wrote those questions and answers down in short hand, and after I had written them down in shorthand I transcribed those shorthand notes.

Government's Exhibit Number O-207 marked identification is the statement that I took from Mr. Johnson on March 27th, 1939. It is a true and correct transcription of the notes that I have testified I took, shorthand notes.

I took of the questions that were asked and the answers that were given on March 27th, 1939.

Mr. Hurley: At this time, if the Court please, I wish to offer in evidence GOVERNMENT'S EXHIBIT O-207, for identification.

Cross-Examination by Mr. Thompson.

I did not take every question that was asked during this interview.

Q. Did you take down every answer that was given at the time it was given?

A. There was an explanation off of the record. That is, sometimes they would ask questions and give answers back and forth and then when they got ready to put one in form to be in the statement I took it down. I only remember one time that witness asked to be allowed to make an explanation off the record and I was told not to put that down. They talked it over and then when they got through discussing it they told me to continue.

I don't remember if I was in the room when Mr. Johnson came into the room with these men. I don't know how long he had been in there with these men before I came in to take the statement. I don't know what had been said before I came in. I don't know what promises, if any, had been made to him. I don't know what statements if any had been made to him. I don't remember

whether they were all assembled when I walked in there, or whether they came in after I got there. I wasn't there alone, I know that. If I went in before the others came in Mr. Wilson was in there.

I am Mr. Wilson's personal stenographer. He is the man in charge of the fraud section of our office. I have been working for him ever since I have been in this office. I was in the Bureau of Internal Revenue in Washington prior to being in this office. I did not come here with Mr. Wilson when he came here. Chicago is my home now.

It was not before.

551 Mr. E. Riley Campbell asked the questions. Mr. Wilson might have asked some, I don't remember. If anybody else did it was Mr. Clifford but I don't remember that he did. Mr. Johnson was present excepting the three I have named. No other Government men were present.

Mr. E. Riley Campbell is a special attorney, I believe, connected with the Treasury Department in some way. That is Mr. Campbell here, sitting second from me, and Mr. Wilson that I mentioned is an agent, and this Mr. Cliqord that I mentioned is an internal revenue agent.

Nobody was here as an attorney for Mr. Johnson at the time this statement was taken. Mr. Johnson was there alone as far as his side of the picture was concerned.

Mr. Wilson, Mr. Campbell and Mr. Clifford did not all ask the questions at once. If they all three asked questions then they would alternate.

I took down the exact words that were asked as far as I recollect. I took down the exact words that Mr. Johnson gave. I assume that I started taking this interview as soon as the conversation started. I am sure that after I came into the picture I took the first question that was asked. Everything that was said while I was in the room is transcribed on these pieces of paper except when I have a notation in there that an explanation was made off of the record.

I don't remember any greeting of any kind between these men when I came in.

Q. Did the interview start off as bluntly as it starts off here, with the first words said: "For the purpose of the record, Mr. Johnson, what is your full name," is that the first thing that was said after you came in?

A. I suppose so because that is the way they do start.

And then the first answer was "William R. Johnson". I have my notes with me. They have been in the

552 office ever since they have been written. I have a notation in the front of the book showing all testimony that is in that book and nothing is in that book but testimony. I mean these interviews that I take. I have an index in the front of the book. I wrot down the date at the time I took this interview, in the index, and also at the beginning of the statement. And I also write down who is present and asks the questions and who gives the answers.

My notes show that the word you indicate is "persecution" and not "prosecution." Reading further from my notes, they show Mr. Campbell to have stated:

"Now, our information again is that you are an interested party in a number of gambling houses around here and I am inclined to think that our information will be found to be correct.

So that being the case your story here this afternoon is not in accordance with our information.

Now, I want you to think that over seriously between now and the next time you come down. You will have a return engagement here and at that time I think I shall confront you with places, but there is always a—also a penalty for perjury here on these questions and answers. I am going to caution you about that.

The next time you come down here, if you want to stand on your statement given here—given today, it is all right. I am not threatening you. I want—

I am not threatening you. I want to square up the situation one way or the other that you did or didn't own these places and that is not newspaper stuff either.

Do you want to make any corrections or additions to any of your answers?"

553 The Witness: That statement was made by Mr. Campbell and there was no lawyer present with Mr. Johnson at the time.

I don't know if Mr. Campbell brought Mr. Johnson back for this second interview he promised him. I did not take any second statement. This one, taken on March 27, 1939, was the only one I took.

I don't know when the indictment was returned in this case. From time to time I was taking statements right along. I am the only one that takes all the statements that Mr. Wilson would have taken in his office. I don't know whether or not I took all the statements that Mr. Campbell would have taken as special attorney. I would take all the statements Mr. Clifford would have taken if they

were taken in our office. I have written down here everything that occurred there the day while I was there, except where I state on here that something was done off the record.

I possibly began to transcribe these notes the same day. I do not remember about that. This statement that I have in my hand, which is marked Government's O-207, was transcribed at least shortly after I took the statement. After I finished transcribing it I gave it to Mr. Wilson. I don't know what Mr. Wilson did with it.

I read my notes back with this statement just before I got on the stand to see whether it is complete in all ways that it was at the time I delivered it to Mr. Wilson. Someone was holding the statement at the time. This copy that you have in your hand that the Government has offered in evidence. A stenographer for the Intelligence Unit 554 was holding the copy. I read my notes and she held the copy. That was done on Friday before Labor Day. I have not seen this statement since then until today.

I fastened the statement together before I delivered it to Mr. Wilson. I don't know of any changes that have been made in it. I do not know whether Mr. Johnson read this statement after I wrote it. I wouldn't know if he signed it unless that is signed. I examined it just now and it has not been signed.

The Court: Is it admissible against anybody other than Mr. Johnson?

Mr. Hurley: No, I don't think it is. Does your Honor want to see the statement?

The Court: I don't think it is admissible against anybody other than Mr. Johnson. It may be received.

(Witness excused.)

(Which said document so offered and received in evidence was marked GOVERNMENT'S EXHIBIT O-207.) Thereupon there was read to the jury the statement of

WILLIAM R. JOHNSON:

I live at 4224 Hazel Avenue, Chicago. I am a speculator or gambler. The \$255,240.70 specified as income from business on my return for the year 1937 is income from diversified gambling, mostly crap shooting. I did not own any of the gambling houses, nor was I in partnership with anybody operating gambling houses, nor was I associated with anybody so that I shared the profits and expenses

of the business. I obtained this income from gambling, principally crap shooting. I just gambled with a percentage in my favor. I operated the gambling table.

Q. Now, that answer involves the same stories you related in here a while ago.

A. Well, I take pieces of fellows' play, and I gamble wherever a gamble shows. That's the way I'd explain it.

555 Q. As I understand, you receive calls from owners or operators of gambling houses that they need some one down there to back the play, so to speak, and you go down and take over. Is that what you mean to tell us?

A. Yes.

Q. Do you furnish the bank roll?

A. Yes.

Q. And get all the winnings, or a part of them?

A. Yes, and no. Sometimes all of them; sometimes part of them.

I have no record of the places where I gambled in 1937 in the manner I have described. I own properties which I lease to tenants who operate gambling houses, one is at the northeast corner of Dearborn and Division, which is leased to Kelly. Another at 4020 Ogden Avenue, which is leased to Flanagan. There are no others. I have gambled in these places. I gambled in them in 1937. I know nothing about the form of lease I have with Kelly. Sam Tavelin, whose office is at 33 North La Salle Street, is the real estate man in charge and he can tell you the terms of the lease. During 1937 I took over a dice table at a gambling house and banked the games, but I don't remember when and where.

I would say I have known William R. Skidmore twenty years. I have had no business transactions with him. I did loan him \$37,000.00 if you call that a business transaction. I don't. The loan wasn't secured, nor evidenced by any writing. Just his word. I first loaned money to Skidmore about 1934 or 1935. I do not remember how much I loaned him at that time. The total of the loan at this time is \$37,000.00. The loan was made in cash. I kept

556 bank accounts at the Northern Trust and at the Continental Illinois. The personal account at the Continental Illinois is in my name. The building accounts are at the Northern Trust. That's for the Lincoln Park Building and the Thorndale and Glenwood Building. I bank some gambling money. Part of the money I put in the banks is gambling money. That's where I derive my in-

come from. All funds deposited in these bank accounts are either from gambling, the operation of my properties, or my farm. I also have an account in a Wheaton Bank. In the operation of my gambling business it is necessary to have a considerable amount of currency on hand. I keep that currency in a safety deposit box at the Northern Trust Company, or on my person.

My 1937 return was prepared by Mr. Radomski. I have known him since 1926 or '27. He worked for me as a bookkeeper at the Lawndale Greyhound Race Track. Mr. Brantman prepared my tax returns over quite a period of time prior to Mr. Radomski. I changed from Brantman to Radomski because I knew him from having worked for me and knew that he knew something about making out returns, and I decided to give the business to Radomski in preference to Brantman. There are no other reasons. Mr. Brantman's work was satisfactory.

Q. What data or information did you submit to Mr. Radomski pertaining to your gambling transactions for the purpose of compiling your 1937 return.

A. I just gave him the amount.

Q. In what manner did you give him the amount?

A. Like I put it on my return.

Q. Where were you and where was Mr. Radomski when you gave him these amounts?

A. I would say at the farm. I'm not positive, though, because I gave him some records out there—farm records.

At the farm, I'm pretty sure—positive.

557 Q. How did you transmit this information to Mr. Radomski pertaining to your gambling business?

A. Gave him the total figures.

Q. By word of mouth or in writing?

A. I had the figures and showed him the figures, and told him to mark them down.

Q. Were these figures broken down as to month?

A. I gave them to him in a lump sum.

Q. Why did you do that?

A. That's the way I have been filing all the time for years.

Q. What kind of records do you keep of your gambling business?

A. Monthly records.

Q. In what form?

A. Total amount.

Q. How about from day to day?

A. I don't have any day to day records.

Q. Then you do keep day to day records?

A. Yes, but I destroy them; just put the total down.

Q. In what form are the day to day records?

A. Just the amount of winnings.

Q. What kind of note books do you keep this data on, or is it on plain paper, or what?

A. Just plain paper.

Q. Then at the end of the month you have thirty slips of paper and you total these and make a monthly summary.

A. Or carry it over from day to day.

558 Q. Well, would you carry more than one month's records from day to day?

A. No.

Q. In other words, you keep day to day records, then at the end of the month you strike a total?

A. If I have a day to day. Some days I'm not in action.

Q. Do you keep your month to month records?

A. No. Yes. I keep a total at the end of the month. In other words, I have a certain amount of money when I start out. At the end of the month, whatever I have left—the money is there, in case I should happen to—I know exactly at the end of the month just what I do.

Q. You spend out of those monies as you go along from day to day?

A. No.

Q. Do you keep your pocket change separately?

A. Yes.

Q. When did you first destroy these records? In this scheme of bookkeeping that you've outlined here, what records do you destroy first?

A. I wouldn't say it's a scheme.

Q. Well, system, then. Let's call it a system.

A. All right, system. Just jot down the figures and at the end of the month it's there, and the money has got to answer to the figures, that's all.

I destroyed the day to day records, but I kept the month to month records. I have them now in this book. The figures shown for 1937 are: January \$31,150.00; February \$29,500.00; March \$41,350.00; April \$26,300.00; May \$34,250.00; June \$32,200.00; July \$30,175.00; August \$33,450.00. The rest of the months I was out of action. I did no gambling from September to December inclusive.

559 My books show for 1938: March \$16,150.00; April

\$21,200.00; May \$17,800.00; June \$24,150.00; July \$27,100.00. For the rest of the year I was out of action.

My books show for 1936: January \$12,000.00; February \$6,500.00; March \$15,000.00; April \$14,300.00; May \$16,500.00; June \$22,000.00; July \$12,000.00; November \$24,000.00; December \$26,000.00.

In 1937 I gambled at Dearborn and Division, Lawrence and Kedzie, 63rd and Cottage Grove, Ogden, and Crawford. That's my own gambling houses. Outside the permanent places I played private. I couldn't name the individuals with whom I played privately in 1937. I don't ask their names. I know them when I see them around.

William Kelly is proprietor of the gambling house at Dearborn and Division and Andrew Creighton of the one at 63rd and Cottage Grove. I do not know the name of Creighton's house. It's on the second floor. They have bookmaking and other gambling there. I have known Creighton for twenty-eight years. He's been in the gambling business for many years. Jack Sommers runs the gambling house at Lawrence and Kedzie. I have known him for about fifteen years. He has been in the gambling business for some time.

Q. Now you stated a while ago that you sometimes would take a piece of the play from these individuals. What did you mean by that. That's correct, isn't it. Didn't you state that you would sometimes take a piece of the play from these individuals?

A. Yes.

Q. Tell us what you mean by that?

A. I'd take part of their gamble. If the gamble was too high for them, I would take a piece of it.

Q. On a percentage basis?

A. Yes.

560 Q. Is that a standing arrangement that you have with these individuals?

A. Nothing definite.

Q. Well is it a continuous arrangement?

A. No.

Q. In other words, they have to have a specific arrangement with you each time you do this?

A. Yes.

Q. Well, when you make such an arrangement, what percentage of the profit do you retain for yourself?

A. It varies.

Q. Give us the range of percentage.

A. Whatever amount of money they want to put up governs the percentage of the winnings they take.

Q. What's the greatest amount that you put up with any of these individuals in 1937 in order to make such an arrangement as you did?

A. I don't remember.

Q. Did you put up as much as \$100,000.00 at one time?

A. No.

Q. As much as \$50,000.00?

A. No.

Q. What's the greatest amount that you did put up, then?

A. I don't remember.

Q. What would be the circumstances under which you would enter into such an arrangement?

A. The gamble would be too high for them to handle, and I take part of it.

Q. In other words, the game would be in progress at their place of business?

A. Yes.

Q. And the bettors would want to get more than the 561 the proprietors of the house could stand to bet. Is that it?

A. I'd say yes.

Q. Well, is that the fact?

A. Yes.

Q. Then did they call you by 'phone and you go out there, or what did you do following that?

A. Either by 'phone or personally—contact me personally.

Q. Then you make the arrangements with them whereby you agree to back the game?

A. Right.

Q. Then when the game is over do they report back to you as to results?

A. Yes, or I'm right there when the gambling is on.

Q. Where do you say you live?

A. 4224 Hazel Avenue.

Q. And you go from there to the south side when they call you?

A. Yes.

Q. And stay until the game is over?

A. Not necessarily so.

Q. Well, in the instances where you're not personally present, how do you verify as to the outcome of the game?

A. I trust human nature.

Q. In other words, you take their count?

A. Yes, sir.

Q. Well, now, did you ever personally take over the dice table at any of these places and run it yourself for a period of time while a game was in progress?

A. In 1937 I have. I just don't remember when.

Q. You don't remember whether you did that in 1937 or not?

A. I have, yes, at different times, but I don't remember when.

562 Q. Well, did you do that at any time in 1937?

A. Yes.

Q. In what place?

A. Those that I have mentioned.

I have nothing to do with the equipment of these places to protect them against robbery and I could not say how they are equipped. There are no machine guns around there. I believe they search the patrons as they come in. I do not know whether they have a frisker, but I would say that they employ men to take the hardware off of patrons. I do not think we have many hoodlums and thugs around those places. I do not take a bodyguard with me. I just walk into those places unprotected with a large bank roll on me and go ahead banking the house. I do not know whether it is safe but I just don't have any bodyguards. Never had a bodyguard in my life. I wouldn't say that it is perfectly safe to go in a gambling house. Drinking is not permitted on the premises. I do not pay much attention to whether there are attendants who look after the convenience of the guests. I am just interested in gambling. I do not know whether they serve food. I have been in the Chez Paree gambling place but I never gambled there.

Q. Well, Mr. Johnson, our information around here is to the effect that you own, or at least have an interest in a number of gambling houses in Chicago. Do you say that is or is not the fact?

A. No. It's newspaper talk.

I have been around Mr. Skidmore's place of business. I wouldn't say quite a bit, but every now and then he visits my farm and I visit his farm.

I have owned a gambling house. It was a few years ago. I do not remember just exactly how long. I quit owning a gambling house because I could make more money on the

outside. I wouldn't say the way I gamble amounts to syndicate gambling.

563 Q. Well you underwrite gambling and take a percentage for the risk. Isn't that what it amounts to?

A. (Witness merely shrugged his shoulders.)

During 1937 I didn't sustain any losses. I have won every game I played in. I do not remember about 1936 or 1938. I had a Packard car during 1937 which I used in my gambling business, going from place to place looking for games. I used a car exclusively for that purpose.

I bought the Arthur Cutten property at Glen Ellyn and paid \$148,000 in currency for it.

On my return there are deductions for operating the Packard car, \$308.20 for gas and oil; \$420.00 for storage and parking; \$187.85 for insurance; \$75.00 for maintenance and service; \$863.25 for depreciation. I keep records covering these items. I used the car part time for pleasure. I am looking for business all the time. I turned over the matter of figuring out the expenses to Radomski. I think the books containing the items are gone.

Q. Why do you conduct your gambling business all in currency and keep no records of it?

A. I must gamble for cash.

Q. Well, it has been a consistent practice of yours, Mr. Johnson, hasn't it, for at least three years now, not to keep records from which the Government could verify your gambling records?

A. That's the only records I ever kept, since the first year income tax came out. I was never told to keep any different records.

Q. You keep records in detail concerning your legitimate business, do you not?

A. Yes.

Q. According to your tax return, that's a fact, isn't it?

A. Yes.

564 Q. And as regards your gambling business you keep no records at all, except the little black book with the total monthly entries in it.

A. That's right.

Q. Well, now, how is the Government ever to check your gambling figures to know if they're correct?

A. I was never informed to keep them any different. They've always been accepted that way.

Q. Who told you to keep them that way?

A. I'd say Mr. Arndt. He didn't exactly tell me that.

He told me, "We don't care how you make your money, just so you file on it". It's always been accepted.

Mr. Radmonski was a former deputy collector. I never asked him any advice about how to keep my records. He just computed my tax and filed the return. I have never refused to give either Mr. Brantman or Mr. Radmonski any detailed figures concerning my gambling income.

Q. You've failed to do that, haven't you?

(No answer.)

There is no reason why I shouldn't be held to the same standard of conduct with my Government as the ordinary business man. The only reason for not keeping records is because my business is illegal and subject to persecution by local authorities. The Better Government has never persecuted me in connection with my tax return. They have been very fair with me. Now that I know that I should keep books and records so that my returns can be verified, I shall be glad to do so from now on. In the past I did not know that they were required. I never knew before that the law requires a taxpayer to state specifically the items of his gross income and the items of his deductions.

565 I always filed and my returns have been accepted.

From now on I will be glad to keep whatever records you shall tell me to keep. I didn't know that there was a penalty for failure to keep such records and supply such information.

Mr. Campbell: Now, our information again is that you are an interested party in a number of gambling houses around here, and I'm inclined to think that our information will be found to be accurate, so that being the case, your story here this afternoon is not in accordance with our information. Now, I want you to think that over seriously between now and the next time you come down. You'll have a return engagement here, and at that time I think I shall confront you with places. And there's also a penalty for perjury here on these questions and answers. I'm going to caution you about that. The next time you come down here, if you want to stand on your statement given today, it's all right. I'm not threatening you. I want to square up the situation one way or the other, that you do or do not own these places. And that isn't newspaper stuff, either. Do you want to make any corrections or additions to any of your answers?

A. No, sir.

WILLIAM M. BRANTMAN, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is William M. Brantman. I live at 40 East Oak, Chicago. I am an accountant and auditor—for about twenty-four years. I have had grammar, high school, college training, special training in my profession, income tax and other work.

566 I have been practising my profession in and about the city of Chicago twenty-four years and during that time I have had a considerable amount of income tax work. By income tax I mean filing of income tax schedules for clients and preparing those returns. The nature of my work is also attending conference work that comes up by examination of tax returns, revenue department and treasury department. The Internal Revenue Department is a branch of the Treasury Department that handles examinations of income tax returns, and I would represent clients before those bodies.

I was a revenue agent from the period of about 1920 to 1923. My particular type of work in that service was auditing income tax returns of individuals, estates and trust corporations for the Internal Revenue Department. I was located here in Chicago in that service. That was from '20 to 1923. Part of the time I was in Washington taking a forty-five day course in training. That was early in '21.

I know the defendant William R. Johnson. I have had occasion to prepare and file income tax returns for the defendant Johnson. The first time I recall I prepared returns for Johnson in 1924 and 1925 shortly after I left the Government service. I filed returns for the defendant Johnson up to the year 1935. I did file a return for the year 1935.

I prepared Government's Exhibit R-6. That is the return for the calendar year 1932. That is the signature of W. R. Johnson.

I prepared Government's Exhibit R-7 for the defendant Johnson. That is the signature of the defendant W. R. Johnson.

I prepared Government's Exhibit R-8. The signature of the defendant Johnson appears on that.

I prepared Government's Exhibit R-9, for the defendant Johnson. His signature appears on that document.

With reference to these returns, Government's Ex-567 hibits R-6, R-7, R-8 and R-9, I got the figures on R-6,

Item 2, "Income from business or profession \$44,142.25" from Mr. Johnson. He did not submit books and records from which I secured that figure. I obtained that figure in one lump sum. I did ask him from what source that income came. He told me gambling sources.

I received the figure from Mr. Johnson on Line 2 "Income from business or profession" for the calendar year '33, the item of \$85,680.00 on Government's Exhibit R-7.

The item shown on Schedule A represents betting, commissions and gambling. The item is \$88,600.00. The first figure you have shown me is deductions from the \$88,000.00 item. I was not submitted books and records by the defendant Johnson as to the last item of \$88,000.00. I got that figure from the defendant Johnson in one total figure. There was no itemization at all of that figure.

I got the item "Salary, wages, commissions" etc., the figure of \$134,811.46, on Government's Exhibit R-8 from Mr. Johnson. He did not submit books and records to enable me to arrive at that figure. He gave me that figure in one total sum.

There is no schedule as to that item shown on any part of that income return. There should be an itemization on that on the back of the sheet. I do not know of any reason why that is not on there. I do not recall how I got those figures I am referring to in these exhibits. Perhaps it was on a slip of paper, one notation.

I believe I did talk to the defendant Johnson as to whether he should keep books and records as to that income. I told him the Government was demanding that everyone keep books and records of their various income; he would have to have some detail, whether it was received monthly, weekly, or how; even a notation that way would be of some benefit. I don't remember exactly when I told him that.

Possibly '34, '33. The best I can recall he may have 568 said, "All right".

I was not submitted any books and records as to income tax for 1935, Government's Exhibit R-9, Item 2. It was prepared subsequent to the time of the conversation

that I have related. I did have a talk with the defendant Johnson in 1932 relative to income tax matter. It took place in my office, 10 South La Salle Street.

Mr. Callaghan: Objected to, if your Honor please, on behalf of all of the other defendants; conversation in 1932, ten years before the return of this indictment.

Mr. Hurley: These returns from 1932 on are already in evidence, have been admitted.

Mr. Callaghan: Relating a conversation—

Mr. Thompson: They were not admitted against any of the other defendants.

The Court: What do you say about them being received against the other defendants?

Mr. Hurley: I expect, before I get through with this witness it will be for them, too.

The Court: It may be received, if it will be connected with the other defendants.

The Witness: I said the Government was making a drive on income tax returns of individuals whose revenue was from illegal games, and that if there are any men or employees he might have, it would be well to have them file, provided they made the required sum prescribed by the regulations.

If an individual handled five thousand gross receipts for the year, regardless of the net result, or if he had made fifteen hundred, as an individual person or thirty-five hundred as a married man, it was incumbent upon him to file at that time.

Johnson said, "I'll see". I talked to him about the same subject some time later. It may have been a short time afterwards.

569 I received a call to come out to the Horse-Shoe Restaurant. I don't know who placed the call out there that evening. I was introduced to a man by the name of Sommers at the Horse-Shoe Restaurant. He was upstairs in the gambling room. I think it was identified as the Horse-Shoe. I met Johnson there. I was introduced to the defendant Mr. Sommers. Johnson asked me to repeat to Mr. Sommers exactly what I told him. I do not believe I had known Sommers before that. I met Mr. Johnson first. He introduced me to Mr. Sommers. I repeated to Mr. Sommers exactly what I had said to Mr. Johnson, that if any of the men that had received over and above the sum as specified by the regulations, or if they handled

five thousand cash gross per year, regardless of the net results, that it was necessary for them to file, since the Government at that time was starting to accept tax returns on illegal games.

I may have talked to others than the defendants Johnson and Sommers.

I believe the following year, that is, in '33, for the year '32, I filed a return for the defendant Sommers. I prepared the return Government's Exhibit R-35 for identification. That is the signature of Jack Sommers in the lower right-hand corner. I got the information with which to prepare that return from Mr. Sommers. He did not submit books and records to make that return.

Mr. Callaghan: Objected to, Your Honor, as being immaterial; for the calendar year 1932. It is not in evidence.

The Court: Overruled.

The Witness: I prepared Government's Exhibit R-36 for identification. I got the figures and the material with which to prepare that return from Mr. Sommers. He did not submit books and records from which the return was to be prepared.

570 The Court: Overruled.

I prepared the return Government's Exhibit R-37 for identification. That is the signature of the defendant Sommers appearing in the lower righthand corner. I got the information from which to file that return from Mr. Sommers.

Mr. Callaghan: Same objection.

The Court: Overruled.

The Witness: I received that in the form of one figure. He gave me the figure from his own notation.

I prepared Government's Exhibit R-38 for identification purporting to be the individual tax return of the defendant Sommers for the year 1935. I got the information from which to prepare the return from Mr. Sommers. He did not submit books and records to me from which to prepare the return. I got the information in the same form I have described before.

And those returns, Exhibits 35, 36, 37 and 38, were all prepared by me as I have described.

As to these same Exhibits, 35, 36, 37, and 38, Mr. Sommers did disclose the source of the income was from gambling on all of them.

Government's Exhibit 37 shows "Salary" on the face of the return.

There was a conversation that evening between myself, Johnson and Sommers in the Horse-Shoe gambling room as to the preparation of returns.

Mr. Callaghan: Objected to, if Your Honor please, on behalf of the other defendants.

The Court: Overruled.

The Witness: That Johnson's name was not to appear on these returns as the employer. By these returns I mean of any of the individuals that are filed for.

The return Government's Exhibit R-14, for identification was prepared by me. That is the return of William P. Kelly. I got the information from Mr. Kelly to prepare that return. That was for the calendar year 1934. He did not submit books and records for me to use in the preparation of that return. I got the information in one figure from Mr. Kelly verbally. He told me that the source of that income was as an employee. I did not in the preparation of that return show who the employer was.

I met Kelly some time after this conversation at the Horse-Shoe gambling house with Johnson, that I have told you about. I did not know where Kelly was working. I found that several years later. I believe at the D. and D. Club.

I did prepare Government's Exhibit R-15 for identification purporting to be a return for the calendar year 1935 for William P. Kelly. I got the information from which to prepare it from Mr. Kelly verbally. He did not submit any books and records from which the return could be prepared. I got the information that his occupation was a clerk from general topic of conversation with Mr. Kelly. I came to the conclusion that he was doing some clerical work. I can't recall if I got the information from Kelly. It may have come out in the course of the conversation between us. I talked with him about that return in my office here on La Salle Street. That is Kelly's signature appearing in the lower righthand corner.

I prepared Government's Exhibit R-16 for identification purporting to be the income tax return of William P. Kelly for the year 1936. I got the information to prepare the return from Mr. Kelly. He did not submit books and records to me for use in the preparation. I got the informa-

tion that it contains from Mr. Kelly. I do not know as to what place I got that information. I got the information as to the occupation "Manager" from Mr. Kelly. I knew he was working in the gambling places. I assumed he was managing a gambling place.

I don't recall having seen Government's Exhibit 572 R-16-A for identification before. I don't recall where I met Kelly.

The subsequent conversation that I related here that I had with Mr. Johnson was in the Horse-Shoe gambling house. The name of the employer does not appear on Government's Exhibit R-16.

I prepared the return Government's Exhibit R-52 for identification, purporting to be the individual income tax return for the calendar year 1934 of James A. Hartigan. I received the information to file that return from Mr. Hartigan. He did not submit books and records from which to prepare that return. I got the information in one total figure verbally. I evidently got that information "Manager" stated on the return from Mr. Hartigan. He did not submit books and records from which to prepare that return. I got the information from one total figure verbally. I had met him at gambling houses.

Mr. Thompson: To all this line of examination, Your Honor, without interrupting, I want to object on the ground that the defendant, other than the one with whom the conversation is being held are certainly not bound by the statements. It is a conclusion stated by this so-called income tax expert on these documents and is not binding on these defendants.

Mr. Callaghan: At the same time, Your Honor, that the objection does not have to be repeated to each individual exhibit, we object to all of this examination, so far as any income tax of any of the defendants prior to the year 1936, on the ground that that matter, and those conversations with respect thereto are all immaterial to the inquiry here.

The Court: Overruled.

The Witness: I don't quite recall if he told me what he was manager of. I knew he was interested in gambling ventures.

I prepared Government's Exhibit R-53 for identification purporting to be the individual income tax return for the calendar year 1935 of James A. Hartigan. I got the 573 information from which to prepare it from Mr. Harti-

gan. He did not submit books and records from which I could prepare the return. I obtained the information in one figure verbally. He stated that the source of income was salary and bonus. He did not state from where the salary and bonus came.

I first met Hartigan at the Horse-Shoe Restaurant. That was subsequent to the conversation I have related here as to between myself and the defendant Johnson in the Horse-Shoe gambling house.

I prepared the return Government's Exhibit R-44. I got the information to prepare it from Mr. Flanagan. I believe I met Mr. Flanagan at the Horse-Shoe Restaurant.

Mr. Hess: If the Court please, I would like to note an objection to this testimony at this point on the further ground than that which has been stated that the conveyance of this information by these taxpayers to this financial attorney is confidential and cannot be revealed in this fashion without their consent. The point that comes to mind is this: If there is any question about the accuracy, if the defendants were being prosecuted for something that was wrong with the income tax, I think the statute gives the government all power to make inquiry respecting that return from the taxpayer, but not for the purpose of establishing something in connection with another man.

The Court: You are talking now about privilege, I understood you.

Mr. Hess: Yes, that goes right with it.

The Court: Objection overruled.

The Witness: That is the signature of Flanagan appearing in the lower righthand corner. I did not state the occupation, business or profession of the taxpayer in preparing that return.

Mr. Hurley: Did you in securing the information to 574 prepare this return learn what the source of the income of Flanagan was?

Mr. Hess: That is objected to as being improper. We are not responsible for what he learned. If he was negligent in any way in making out these returns as an officer of the Treasury Department in a sense, he is an attorney there, we are not to be held for that. It is conversation.

The Court: Overruled.

The Witness: Yes. It shows on that return as miscellaneous income.

I prepared the return Government's Exhibit R-45 for

identification. I obtained the information with which to prepare the return from Mr. Flanagan. The defendant Flanagan's signature appears on that document at the bottom. Flanagan did not submit books and records to me to be used in the preparation of this return. He did disclose to me the source of the income which I stated on the return. He stated salary and bonus. He did not state from whom he received it.

I prepared the return Government's Exhibit R-58 for identification. I received the information with which to prepare the return from Andrew J. Creighton.

As I recall, I first met Creighton perhaps in '33 or early '34 at my office. I was introduced to him by the defendant Johnson. The best I can recall, Johnson said, "Take care of Mr. Creighton", by that meaning file his tax return. That is Creighton's signature appearing in the lower right-hand corner of that document. Creighton did not submit books and records to compile that return. The information was given me in one total verbally. Mr. Creighton intimated the source of income was from gambling ventures, as commissions.

Government's Exhibit R-59 for identification was the return for the calendar year 1934 for Andrew J. Creighton prepared by me. I secured the information to prepare that return from Creighton. Creighton's signature appears on that document.

I prepared the return Government's Exhibit R-60 for identification. That is the return of Creighton for the year 1935. I received the information with which to prepare that return from Mr. Creighton. There were no books or records submitted to me to be used in the preparation of that return. It was secured the same as I have described the previous exhibit. Mr. Creighton disclosed the source of his income as from salaries and commissions, I believe.

I prepared the return Government's R-61 for identification, purporting to be the income tax return for the year 1936 of Andrew J. Creighton. Creighton's signature appears on that document. I received the information with which to prepare Exhibit R-61 from Mr. Creighton. Creighton disclosed the source of income was from gambling ventures. It is marked miscellaneous commissions on the face of the return.

I prepared Government's R-80, the return of E. H. Wait. I obtained the information to prepare it from Mr. Wait.

Mr. Wait's signature appears on that document at the bottom. Mr. Wait submitted some records to be used in the preparation of that return. There were no books. May I see the return? Under Item 5, income from Lawndale Greyhound Park. A partnership return was filed. This is a partnership income. Under profits from sale of stocks or bonds there were losses, \$26,893.25. Under Item 11 there was miscellaneous income and speculation \$5,000.00.

I prepared the return Government's Exhibit R-81 for identification for Mr. E. H. Wait. That is for the calendar year 1935. The signature of Wait appears on that document at the bottom lower right-hand corner. There were no books and records submitted to me to be used in the 576 preparation of that return. I got the information to prepare the return from Mr. Wait in the form of totalled figures. I can't be positive whether it was written or oral. Mr. Wait was out of town one year and may have sent this to me with the data and the signed return. I can't recall. The source of the income was disclosed to me by Mr. Wait from speculative sources.

I prepared the return Government's Exhibit R-24 for identification. I received the information with which to prepare that return from Reginald E. Mackay.

I first met Mackay early in 1935. I believe at my office. He had been sent to me, I believe by Garrett Meade. Mr. Mackay did state the source of the income disclosed on that return. He said that the source of the income was from salary and some from rental income. He did not disclose where the salary came from. That is Mackay's signature appearing on the lower right-hand corner.

I prepared the return Government's Exhibit R-25 for identification, purporting to be the return of Mackay for the year 1935.

I secured the information from which to prepare the return from Mr. Mackay. His signature appears on the lower right-hand corner of that document. Mackay disclosed to me the source of the income of the figures I used to prepare this return. He said the source was salary and rental.

577 Mr. Thompson: May it please the Court, you asked me yesterday when this matter of privilege came up to what statute I was referring when I said the statute was the authority on the proposition that a public accountant cannot reveal confidential communications. I knew there was such a statute but I couldn't think of just where

it was. It is in the Public Accountants' Act of Illinois, which is Chapter 110½ of our statutes, Section 19, which says, a public accountant shall not be required by any court to divulge information or evidence which has been obtained by him in his confidential capacity as a public accountant. That is the statute to which I was referring.

Mr. Hurley: It doesn't apply in the Federal Court, as I understand it.

The Court: Do you contend that applies here?

Mr. Thompson: Your Honor, I frankly state that I do not know whether it does or not. The rule that substantive law of the state shall govern in the matter of trials in the Federal Court within the state is one that has had some confusion in the Supreme Court of the United States and I admit I am still confused. If they are settled I don't know. But anyway, I merely call attention to the statute and I admit that I do not know whether it applies or not. Your Honor has had much more experience than I have had in that.

Mr. E. Riley Campbell: The Conformity Act has never been construed to lay down rules of criminal evidence in the Federal Court. I think that is the unanimous holding of the Supreme Court of the United States.

578 Mr. Thompson: I don't think this is a rule of criminal evidence. I think this is a rule of substantive law.

The Court: Overruled.

Direct Examination by Mr. Hurley resumed.

The Witness: I prepared the return, Government's Exhibit R-108, purporting to be the individual income tax return for the calendar year 1935 for John M. Flanagan. The signature of John Flanagan appears in the lower right-hand corner of that document. I received the information by which to prepare that return from John Flanagan. He did not submit books and records to me with which to prepare that return. He gave me figures that went to make up the return, verbally, in one lump figure. He stated that the source of his income was from his connection with gambling. He did not state what the connection was. He did not state what the gambling was. I believe it was salary and bonus. I was introduced to Flanagan by one of the men for whom I filed in the similar

group. I believe I first met him at the Horse-Shoe restaurant.

I filed these returns that you questioned me about yesterday afternoon after I had prepared them, at the usual place of the Collector of Internal Revenue in the city of Chicago. That office is located in this building. That applies to Government's Exhibits R-35, 36, 37, and 38, the returns to which I have testified about the defendant, Jack Sommers; and also Exhibits R-14, 15, and 16 as to the income tax returns of the defendant, William P. Kelly; and also as to Government's Exhibits R-44, 45, and 108, the income tax returns for defendant John Flanagan; 579 and also Government's Exhibits R-58, 59, 60, and 61, the returns of the defendant Andrew J. Creighton; and as to Government's Exhibit R-81, the return of the defendant Wait for the year 1935; and also as to Exhibits R-24 and 25, being income tax returns for the defendant Mackay for the years 1934 and 1935.

Referring to the conversation between myself and the defendant Johnson in the Horse-Shoe gambling house in 1932, Johnson said "Meet my man Sommers."

I prepared Government's Exhibit R-8, which is the individual tax return of the defendant Johnson for the calendar year 1935. Referring to the schedule appearing in connection with that with reference to an item shown, "Real Estate Taxes," these figures were the record that the real estate agent had, the man who handled the financial end of the building, such as the payment of bills and collection of rents. Those records were submitted to me for the preparation of that return at Mr. Johnson's instance. I cannot tell you what that item of \$20,273.96 is comprised of without my working papers. I had work papers on which I show a break-down of that figure. The document you show me is part of my work papers in connection with the preparation of that return.

Q. Can you tell us after looking at that work paper of yours what the item of twenty thousand odd dollars is made up of?

Mr. Thompson: We object to this as hearsay; no showing of any connection with anybody with this piece of paper he has got in his hand.

580 Mr. Hurley: He has testified they are his work sheets that he used.

The Court: Look at that paper. Does it refresh your recollection?

The Witness: A. Yes, sir.

The Court: Tell what it is.

Mr. Thompson: We object on the ground that it is not a matter of knowledge, but some computation he has made from some other figures.

The Court: Overruled.

The Witness: After looking at that sheet, I can tell that the figure of twenty thousand odd dollars real estate taxes, as shown on the schedule of the return, was comprised of taxes for several years. Some were delinquent taxes on the Lincoln Park building and taxes evidently paid in 1934. As shown on the schedule of that return, Exhibit R-8, the amount is \$20,273.96, comprising four years—\$5,110.42 in 1929; the next year, 1930, \$4,696.60; in 1932 two items, \$2,416.53 each; in 1933 two payments, \$2,063.41; and an item of compilation \$15,007.06, no computation. Those items which I have just read for the years mentioned were shown on the return of Johnson as taxes having been paid on his return for the calendar year 1934.

Q. Now, with reference to the list of exhibits which I have just asked you about, without reading them, I will ask you whether or not the name of the employer appears on any of those returns?

A. No, sir.

Mr. Thompson: We object to that as calling for the interpretation of a written document, your Honor.

The Court: Sustained.

581 Mr. Thompson: And, also, we object to any such inquiry as to a document relating to other peoples' income as hearsay, as to Mr. Johnson.

The Court: Overruled.

Mr. Hurley: Q Were those exhibits which I have just previously enumerated made subsequent to the time Johnson told you that his name was not to appear on returns as employer?

Mr. Callaghan: That is objected to as argumentative and an attempt to throw innuendo into the question.

The Court: I will let him answer.

The Witness: A. Yes. Sir. I would prepare returns for other persons than the ones I have told you about here, out at the Horse-Shoe restaurant. I met them by appointment made by various of the individuals. One person that made the appointments was Jack Sommers. I

would call him and ask him when any of the other men were going to file their tax returns, and he would make appointments with the different individuals and I would keep them. After the appointment was made with reference to preparing returns, I would obtain my information directly from the individuals. I would usually meet them in the Horse-Shoe restaurant. I can't just select that individual in each specific instance that he made appointments for. James Hartigan, Claude Sullivan, and Roy Love made appointments for me.

I first met Roy Love at the Horse-Shoe restaurant. I was introduced to him I don't recall by whom. I did prepare returns for Roy Love. I did that at the Horse-Shoe restaurant. I did prepare returns for Barney McGrath. That was at the Horse-Shoe restaurant and otherwise at my office. I did prepare returns for Bartley Berg 582 and Frank Villim, both at my office, and I believe on one occasion at the restaurant. I prepared returns for Johnnie Kalus at my office. I did prepare a return for James Hanley at my office. He was referred to me by one of the men that I filed for. I do not recall who referred him to me. I don't recall the name of Pete Riley. I did prepare returns for Murdock MacKenzie. I met him through one of the other men working for one of the others. I prepared returns for Frank Vase.

Most of the individuals named, with the exception of eight or ten, were prepared after 1933. Some of the others, like Hartigan, Sommers, perhaps Flanagan, perhaps Sullivan, and McGrath may have filed them for, from 1932 on, and each year I may have had a few more men in the filing of their returns. I filed returns for a fellow named Charles Smetana. He came to my office. One of the men I had filed for had sent him there.

Mr. Thompson: We object to all this conversation outside of the presence of these defendants. Obviously it is a conversation and government's counsel know it.

The Court: Overruled.

I prepared and filed returns for a man named Gordon Oglesby. I was introduced to him at the Horse-Shoe restaurant. I don't recall by whom. I prepared and filed a return for Edward Gates. He came to my office. I believe I met him through Bartley Berg, one of the men I had filed for. Gates used to come to my office for all his filings. I made and filed returns for Albert Kalus. Kalus

came to my office. I prepared and filed returns for Lawrence J. Bovin. I believe I met him at the Horse-Shoe restaurant. I prepared and filed returns for Bovin after that. I prepared and filed returns for a person known 583 as Garrett Meade. He came to my office, possibly in the year 1933. I did file returns for him for the year 1933. If I remember correctly, I believe I filed two for him, including the year 1936. I do not know where Garrett Meade worked. I did file returns for William A. Barre. I do not recall where I met him.

I prepared and filed returns for a person known as Ralph Moss. He came to my office. I don't recall when I met Moss. It may have been 1934. I can't be positive if it was '33 or '34. I don't have any work papers with which I can refresh my recollection as to the dates I have filed for these men. You have them. These are my folders and working papers. I can tell from an examination of those when I prepared the returns for these persons I have spoken of.

I filed returns for Frank Vase for the year 1934, March 12, '35; Charles R. Smetana, the year 1934, March 8, 1935; Conrad McGrath, the year 1934, March 5th, 1935; Edward J. Gates, the year 1934, March 11th, 1935; Lawrence J. Bovin, the year 1934, March 14th, 1935; Frank J. Villum, the year 1934, March 14th, 1935; Reginald E. Mackay, 1934, March 13th, 1935.

Mr. Hurley: Now, all of these persons whom you have enumerated and concerning whom I have questioned you, what was the last year in which you filed returns for any of those persons?

A. Most of them, including the year '35, some eight or ten in the year 1936.

I cannot tell offhand which cases I filed for the year 1936. I can by examining my work papers.

Mr. Thompson: We object to all of this testimony which he is now about to testify to in response to the question, on the ground that it is hearsay as to the de- 584 fendant Johnson. It has no materiality to any issue in this case. It tends in no way to prove the issue.

The Court: Overruled.

I prepared and filed returns for the calendar year 1936 for J. H. Hill, James E. Hanley, Claude E. Sullivan, Carl W. Miller, A. R. Lasson, Joseph F. Bartels, William P.

Kelly, Bernard C. McGrath, G. J. Duffy, Gordon M. Oglesby, Frank Kalus.

I had a conversation with the defendant Johnson in the year 1934 with reference to bank accounts. We had a conference at the revenue agent's office. Mr. Johnson was there.

Q. What if anything was said at that time by the defendant Johnson with reference to his bank accounts?

Mr. Callaghan: That is objected to on behalf of all the other defendants as hearsay and out of their presence.

The Court: Overruled.

The Witness: Mr. Johnson did not keep bank accounts of his entire business. He did not want to build up evidence against himself to be used for law enforcement. I don't recall anything else said by Johnson there. The last calendar year was 1935 that I prepared a return for the defendant Johnson. I believe I prepared the real estate data for the calendar year 1936. I mean the information schedule form furnished me from the rental agents covering rental property that Mr. Johnson was interested in. I had previously in filing returns for other years prepared those schedules of real estate transactions. At times I would get that data from the rental agents sent to my office and at other times I believed Johnson's brother left them at my office, or some messenger. They were submitted in detail.

I did not talk to Johnson about preparing returns after 1936. I did talk to him about preparing the 1936 returns. Johnson said he had to give the work to someone else, or he was giving the work to someone else. I asked him if my work was satisfactory and I believe he said it was, but it is one of those things. He said perhaps in a year or so I may get this work again. I have never had any of that work since that time. I never tried to obtain it back again. I have not had the income tax work since then of the other men I have enumerated and that includes all of the men I have enumerated here. I have seen books in connection with the Horse-Shoe restaurant. I believe Roy Love was the bookkeeper. That is the man I described here that I had prepared returns for. I never had anything to do with the Horse-Shoe restaurant books. I audited them annually approximately three years to determine the expenditures, receipts, profit or loss, for the given period. The audit which I made I used in the preparation of the return

of James Hartigan, I believe for the year 1935. It was not used for the purpose of preparing the return of any other of these men I have mentioned.

Mr. Hurley. At this time, if the Court please, I would like to offer in evidence Government's Exhibits R-35, 36, 37, and 38, being returns of Sommers, and also R-14 and 15 and 16, being returns of Kelly, and R-52 and 53, being the returns of Hartigan, R-44, 45, and 108, being returns of Flanagan, R-58, 59, 60, and 61, being returns of Creighton, R-81, the return of Wait, R-24 and 25, being the returns of the defendant Mackay.

Mr. Thompson: I object to the documents, all of them, as hearsay as to the defendant Johnson; immaterial to any issue in this case.

586 Mr. Callaghan: Objection on behalf of all the other defendants, your Honor, as not being probative of any of the issues in this case. We were furnished in this lawsuit with a bill of particulars in which it is charged that the various defendants filed income tax returns for '36, '37, '38, and '39. There is no mention in the bill of particulars as to income tax returns prior to 1936. The Government having filed that bill of particulars to furnish information, they are bound by it just as they would be by a special declaration.

The Court: Objection overruled.

(Said instruments, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS R-35, R-36, R-37, and R-38; R-14, R-15, and R-16; R-52 and R-53; R-44, R-45, and R-108; R-58, R-59, R-60, and R-61; R-81; R-24 and R-25.)

Cross-Examination by Mr. Thompson.

I believe I made the first income tax return for William R. Johnson in 1925. The occasion of my first service for Mr. Johnson was filing his income tax return. I met him through his interest in a real estate venture with other individuals. I had been doing some work for them, that is, Mr. Anixter and Mr. Fields and others. I had been making returns for a syndicate which was interested in the building at Division and Dearborn. Mr. Johnson was one of
587 the owners of a participating interest in that syndicate that owned that building, and in connection with that work he asked me to make out his income tax return for '25

or '26. I believe I made his income tax continuous for the years from 1927. I do not have copies of his returns here in the Government files that far back. I have not got my work papers here that far back. Possibly 1932; '31, perhaps. There is no significance in the fact that I have got them just as far back as the Government wants to go with this case. I have not destroyed the figures he gave me ahead of that since this investigation started. It was years prior. I had no use for keeping the files from 1932 back. They had been outlawed in my interpretation for any general purpose. It is purely an accident that the year happens to coincide with the period that this investigation starts with. The Government has not shown me the original return of Mr. Johnson for 1928 in their many conversations with me. They have shown me the return for 1931. I did not see '30, '29, '28, and '27. I could not be positive whether I filed any returns for Mr. Johnson in '27 or '28.

This conversation that I had with Johnson about other people filing returns occurred either the latter part of 1932 or the spring of 1933. Up to that time I had not made any other returns for these other defendants excepting the defendant Johnson. I cannot fix the date any nearer except it might coincide with the income tax filing, which is from January to March 15 of any given year. I could not be positive that this conversation took place within three months of March 15, 1933.

I had not filed any return for Jack Sommers prior to that time. I don't remember if I filed any for John Flanagan prior to that time. As I best recall, I did not file any returns for any of the rest of these defendants prior to the time that I had this conversation with Johnson. I don't have any work papers that would tell me, refresh my memory. That is nine, ten years back. I do not have any of these conversations that I have been relating written down on my work papers. I am just relating those from memory. I have not related those conversations to any one prior to the time that I related them to the Government agents this year. Those conversations were not put in my mouth by anybody. I just remembered them after they asked me what conversations I had had. I have related all of the conversations to which I have referred.

Q. Johnson just walked in to you and you just said to him, "The Government is making a drive on incomes from illegal gains and if you know any men who have gains be-

yond the regulations then report them," and Johnson said, "I will see." That is all the conversation, is it?

A. No. I could have met up with him or I could have called him, I don't recall.

I could have called him to bring him down and tip him off to that information. That possibly would have been in this conversation in '33. It might have been in 1934. It could have been '31, '32, or '33. I don't know the exact year. It might tie in with the time I started filing returns for some of the other individuals. That is as close as I can attach the time. I am trying to recall as best I can the conversation I had with Mr. Johnson. I have not changed my recollection as to this conversation during my many conferences with the Government agents and attorneys. I

have had about six conferences with them on this subject. I have not been running in and out of here every week for the last year. It did not start more than a year ago. The first time I had a conference was in July, 1940. I was before the Grand Jury prior to this proceeding. I have been called in many times by the District Attorney's Office and I have been called before the Grand Jury many times. My answer of half a dozen times is pertaining to this present proceeding. I mean this particular indictment, this particular trial. But with respect to this general subject of investigation of income tax of Mr. Johnson, I have been interviewed possibly twelve or fifteen times over a period of perhaps a year. I tried to answer their questions as best I could recall. Some calls were for me to bring my work papers in, other calls were for me to sit down to explain my work papers. I only appeared in the Grand Jury rooms once. I had many interviews prior to my appearing before the Grand Jury and many since, and half a dozen at least in the last six weeks in connection with my testimony in this trial.

The best I can recall is that I had a conversation with Mr. Johnson respecting other people filing returns either the latter part of '32 or the early part of '33. Mr. Johnson had been my client, if not continuously, at least off and on since 1925, and I filed income tax returns for him during at least a substantial part of that period and his returns I knew were from gambling gains, from gambling sources. Prior to the time I had the conversation with him, it had been the practice of the Government not to take returns from illegal gains. Men of the Department will tell you

that it was not necessary for men to file that had been making money out of illegal gains. I was familiar with the 590 regulations and the court decisions respecting the filing of returns regarding illegal gains at that time. The Government would accept returns that were filed voluntarily. I don't recall that there had been any court decisions so far as I know that returns from illegal occupations and businesses should not be accepted by the Government prior to that time. I think there was a case, called the Sullivan case, that caused this activity of the Government seeking returns from those engaged in so-called illegal pursuits, a Federal case, I believe, that enumerated some of the features pertaining to illegal gains and shortly thereafter the Government started a drive. That was after March 4, 1933, that the drive started and gains from any source were accepted, or, returns, without question. And if a man was a gambler it was accepted if he put on speculative investments or any other name he wanted to. It wasn't expected that he should furnish evidence against himself in state prosecutions for these illegal enterprises. If he was a bootlegger it was not expected that he should reveal that to the Federal Government for Federal prosecution. In other words, generally speaking the Department of Internal Revenue collected its taxes and paid no attention to the source from which it came, and it was the business of the Department of Justice to try and find out the other matters that pertained to their work.

I knew when Mr. Johnson first came to me that he was a gambler. I knew it by general reputation. He has been a known gambler in Chicago for twenty-five years, perhaps longer than that. Nobody had any doubt about what his occupation was and I had that common knowledge that

Mr. Johnson was a professional gambler. I made out 591 income tax returns prior to the time I served him.

He came to me because of my connection with the real estate syndicate in which he became interested, so that when he came to me to make out his return for 1926 I didn't put on the return that he was a gambler. I believe we termed it either "Miscellaneous Income" or "Miscellaneous Speculative Income." I believe I coined the phrase "Miscellaneous Investments and Speculations." He made his income from various sources and that was as close as it could have been identified in line with his gambling. I did not put down there on his return that he was operating

a gambling house, and I never denied in conference with the Revenue Department that the man was a gambler. He was a gambler and everybody knew it, the Revenue Department, as well as everybody else. There was no secret about his business. Generally, people know that he got his income, whatever it was, from gambling.

I don't recall that at the time he talked to me about wanting to make his return he said he wanted to so make it that he wouldn't be furnishing evidence against himself in prosecutions under the state law. That wasn't even discussed. When he came in to make out his return, I put down the dollars that he had given me. I coined the expression "Miscellaneous Investments and Speculations" and put it in his return. Mr. Johnson was a single man and took the legal deductions he was entitled to. He either gave me the money or a check to pay his tax. My office forwarded them to the Collector of Internal Revenue.

I believe Mr. Johnson was in my office in the first three months of 1933. I don't have any doubt about where he was except the fact that Mr. Johnson usually came to my office and I assumed that he was in my office because 592 he usually came there to make his return. There was no one else in my private office while he was there. No one came in with him. He came in to make out his income tax return and furnish me information for that purpose. That is the only object that he had to come in there that day. I was the one that brought up the subject about the Government drive against people engaged in gambling and other illegal enterprises, and I brought that up so that he could tip off any of his friends or associates or pals in the gambling business if they had not been filing returns. I said to him, "If you know any men who have incomes beyond the limits fixed by Government regulations, then they should file now." And he said, "I will see." There was no other conversation. It was very brief. I knew that he had friends all over town and that he knew many people who were engaged in gambling, as well as himself, and so I was doing what I thought was a friendly act in suggesting that he might suggest to his friends that if they had not filed they had better get at it. And the reason I thought it was appropriate to make the suggestion was because there was a change of policy in Washington and they were making a drive to get returns from those engaged in so-called illegal pursuits.

Mr. Johnson didn't say to me at that time that he had any knowledge of any persons who should file returns who had not filed returns. We had a general conversation. There wasn't anything that particularly impressed that conversation on my mind at that time. It might have been anyone that I might have happened across at the time in similar pursuits. If they were clients of mine, I would tell them the same thing. There was nothing Mr. Johnson said or, so far as I knew, had done to cause me to warn him particularly. I knew he was a gambler and in that business. I had no occasion to be warning him particularly.

After that I got a telephone call to come to the Horse Shoe restaurant. I don't know who called me. The message was left at my office. A call came after I had made the suggestion to Mr. Johnson. I don't know if it was Mr. Johnson that called. The message was left with my secretary, and I received my telephone calls in the usual course of business. She gave me a memorandum that I was to see such and such a man at such and such a place. I kept the appointment. I went up to this place without any further calls. I believe it was 4750 North Kedzie Avenue. That is on the West side of Kedzie Avenue, South of Lawrence. The restaurant where I entered is a regular place of business, confined to restaurant purposes: many tables, a counter, dining room. Quite a large room, perhaps 100 x 125 feet deep and the usual depth of a building lot. Just an ordinary room. I believe the entrance was at the center. The tables and chairs were at the right of the entrance. I believe a cigar counter and a cashier were on the left-hand, the same as ordinarily appears in the front of a restaurant. The rest of the room was furnished with tables in rows and chairs. Nothing unusual in the appearance of this restaurant. I cannot fix the time of my visit any more definitely. I cannot be positive whether it was '32 or '33. I don't know whether it was on the 17th day of February. I do not recall who I first met when I walked into the restaurant. I believe I spoke to the cashier, or whoever might have been there, and asked for Mr. Johnson. I said I don't know who the telephone call came from. I don't recall the first person I met when I walked into the restaurant, but I believe I asked the cashier or whoever might have been cashiering. I cannot be positive. I don't know who was the next person I met after I made this entry, but I recall meeting Mr. Johnson. I

don't know who the next person I met, in rotation, was. I did not meet Mr. Johnson there in the restaurant. I was taken to a gambling room by someone at the restaurant. I don't recall the exact date. It was in '32 or '33. I don't remember that I called at the restaurant when it was at 4701 North Kedzie, on the 17th of February, 1932. I have known the address of the restaurant was 4750 in some part of those years. It is possible that it was subsequent when it was 4750.

Q. 4701, at the corner of Lawrence and Kedzie, was where the Horse-Shoe restaurant was operated by Mr. Barnes, was it not?

A. I believe that was later.

Q. That was earlier, was it not?

A. It may have been near about that time.

I knew Mr. Barnes. It is quite possible that Mr. Barnes was the man I went out to see at the Horse-Shoe restaurant on that night.

Q. You saw Mr. Barnes there?

A. Yes, I saw—met Mr. Barnes.

I don't recall if Mr. Barnes introduced me to Mr. Sommers. It might have been possible. I had met Mr. Barnes and filed returns for him. I can't be positive as to Mr. Barnes' introducing me to Mr. Sommers.

Q. And didn't you then say to Mr. Barnes and Mr. Sommers, "The Government is making a drive for returns from those who are engaged in what would be illegal pursuits under the State law, and if you have got anybody else around here who as an income, gross, in excess of \$5,000, they should file returns"? Did that conversation occur with Mr. Sommers at that time?

A. Somewhat.

Q. And Mr. Sommers then went and brought some persons to you and you made out returns for several persons there, didn't you?

A. Mr. Sommers, I don't believe, brought individuals to me at that time. He may have pointed out other individuals from time to time for me, out of courtesy.

Q. Weren't there ten or twelve persons that gave you memorandums that very night, in Mr. Barnes' restaurant, the Horse-Shoe, from which you made up returns for them?

A. I could not be positive about the date without my work papers. That would refresh my memory as to that date. I have done that on many occasions as a similar thing.

I made up Mr. Sommers' return from the information he gave me and at the same time I made, or took a memorandum to make returns for ten or twelve people for that night or other nights. I took this memorandum and made up the returns and then mailed their copies to them. I completed the computation of the tax in their presence and obtained the money and the fee for the work for each individual. Then I took this memorandum and the money and went back to my office and wrote the return on the official blank which they had already signed. That is, I copied it in with the typewriter over their signature.

396 Q. They never saw the return after you had made the transfer of the figures by typewriter?

A. They saw a copy.

Q. Yes. You mailed them a copy with a receipt?

A. That is our regular procedure annually with all clients.

There wasn't anything unusual about that. I don't recall if it was on that very night or on different nights which

I made appointments that ten or twelve people there
397 in the Kedzie Restaurant signed the returns and gave me money to pay their taxes.

I knew that all of these men that were there were gamblers. I did not have to ask them what their business was. When Mr. Sommers told me what his income was for 1932 he did not have to tell me what to put on there about his occupation. I knew it was made from gambling ventures. At times they stated salary and bonus. The income return of Mr. Sommers for the calendar year 1932, being R-35, shows the source of income, miscellaneous commissions. There is nothing in there about salary or bonus or anything else except in the printed part of the blank. The printed question at the top is "Salaries, Wages, Commissions, Fees, and so forth." "State name and address of employer." That is what is printed on the blank. In the space beyond that I wrote the figures. The words I wrote were "Miscellaneous commissions." I wrote that at my office. After Mr. Sommers had signed the blank at his restaurant and I had made the computations there on a piece of paper and he had given me the money, I sent him a copy of his return and went over to the Revenue Department and paid his income tax and sent him the receipt. That was the routine.

I made out the returns for 1934 for 1933 and put miscellaneous betting commissions as the source of the income

for that year. That was put in at my office after Mr. Sommers had signed the return in blank and I had gone back to my office. And I mailed Mr. Sommers a copy of his return as I filed it and the receipt for the payment of the tax. And then in 1934 Mr. Sommers signed this document in blank and when I got back at my office I typed in the return as a source of his income "Miscellaneous Speculative Earnings". One of my associates wrote the word "Salary" in pen and ink in parentheses on this return. That is his handwriting. I did not write it there. Mr. Sommers did not write it there. Mr. Sommers did not tell me to write it in there. Just one of my associates put it in there. I don't know why.

Mr. Sommers' return for 1935 was for less than \$5,000, so I put it on a 1040 A return. I put the figures he gave me opposite the printed words "Salary, Wages, Commissions, Fees, etc." I did not write on there any source of income. I presume that he was still the same kind of gambler in 1935 that he had been in '34, '33, and '32. No instructions were given to me at that time to return it any differently, except one. I wrote that on there, his title as manager at the heading below the address. I don't recall who suggested that. Perhaps in the course of the conversation his various duties, activities during the year taking a gamble, being interested in a gamble, something of that nature, would have given him that title. The last thing a man would put on his return in Illinois would be "Operator of a gambling house", because if he is convicted a third time it is a penitentiary offense. Tax returns are public property. He certainly would not put "Owner" or "Operator of a gambling house" on there. It is possible that I used the word "Manager" as about the least offensive thing I could think of to explain his business. I don't know if Mr. Sommers was choosing the word that I should use, or was giving me any special directions.

596 I said at some time when Mr. Sommers was being called upon by me that Mr. Johnson was present. I can't fix the date definitely. And I said that Mr. Johnson said to me, "Now, you tell Sommers what you told me" and then I told Sommers that the Government was making a drive and if he knew any other men whose returns had not been filed they ought to be filed. Then Mr. Sommers made

appointments for me. These other customers were brought to me. Some of them could have been brought in that night. Since I do not have specific dates, I would not want to be positive.

While I was taking this memoranda and these signed blanks, Mr. Johnson did not say, "I am the employer but don't expose me". He just said to me, in effect, "I am not the employer of these men". "Don't put my name on there as the employer". I think that was the purpose of the statement from Mr. Johnson. I don't believe any of these men had said there in the presence of Mr. Johnson, "I am working for Mr. Johnson".

When Mr. Johnson came to me to make out his income tax returns, he referred me to the real estate agent handling his real estate for the information with respect to that part of his income, and I often went over to the office of the General Mortgage Company to get information there about the Lincoln Park building at Division and Dearborn. This information that appears in these returns all came from the books of the real estate agency. I don't recall if I got the taxes on Mr. Johnson's return from the books or directly from tax bills or receipts. Mr. Johnson didn't give me any special instructions about making a return of that item. That was in the general course of business. I got this information from either the books of the real estate agency or from tax receipts which they had sent and made up this return. I was referring to Government's Exhibit B-4 when I was testifying about that item for real estate taxes. All of the information in that column of figures in the top which is marked D-5 was obtained from the records over at the real estate agency office. Mr. Johnson gave me no instructions about these items at all, except just go over and get the facts.

There was a check up of Mr. Johnson's income tax return in the December of 1934. I was present at the conversations respecting Mr. Johnson's returns and the method of securing the information for income and so on. I recall the additional assessment there, but not as to the specific figures. It was some substantial sum. Mr. Johnson and I were talking over Mr. Wilson and Mr. Blocker and Mr. Tesser about the investigation of his 1934 return and during the course of that conversation they were asking him a lot of questions about his return. I believe they asked him why he didn't have a bank account of his income

and why he didn't keep books and records, etc., of his gambling returns, and it was during that conversation that something to the effect was said by Mr. Johnson that he didn't want to furnish evidence against himself for prosecution. He said, "The reason I didn't keep bank accounts was I didn't want to build up evidence against myself for prosecution purposes".

601 There was no specific mention as to prosecution for gambling. That being his general business, it would be that one thought he was trying to protect himself on. I don't believe the intimation was that he refused to keep bank accounts, and so on, to keep from being prosecuted on his income tax. This statement of his was a statement made through the course of a long interview. It was a statement made in the general course of the conference. It was during a request for a hearing in connection with this \$33,000 claim on which Mr. Johnson and I were appearing before Mr. Wilson, Mr. Tessen and Mr. Blocker, and they refused to allow this claim that we were making. Then he authorized me to take the case to Washington. I went to Washington on the matter. Down there I got the matter adjusted to the point that they agreed to accept somewhere around \$9,000, plus interest and such charges as were accrued thereto. And I telephoned Mr. Johnson from Washington that I could settle the matter for that amount. He authorized me to go ahead and close the thing up. I believe it was in the year 1934 when this conference was had. It was during the course of that conversation that this matter came up that he ought to keep some sort of record or books of permanent account of his income.

I made out his return for the year 1935 and I believe that return was filed in due course with the same specification of source of income. The 1934 return, which is Government's Exhibit R-8, shows the words "Miscellaneous Speculative Income". The rest of the return has no type-written specification of his business at all. On the 1934 return, I put that "Miscellaneous Speculative Income" in the blank space between Items 1 and 2. On the 1935 return I just put the extended figures on the line "Item 2.

income from business or profession", because it was 602 shown in Schedule A as from business. Schedule A shows the general character of income with the deduction for some automobile and small business expenses. There were no different books or records furnished in 1935 than there had been in 1934.

The first year I made a return for Mr. John M. Flanagan was either 1932 or 1933. That was when Mr. Flanagan was operating on the West Side of Chicago, and I believe he met me at my office. He came down to my office to make his return in '32. He came in on one occasion or two. The best that I can recollect is that he came into my office by himself. I know he has been to my office. According to Government's Exhibit R-44, Mr. Flanagan had made a return prior thereto, and this return is for the year '32 and it recites "Miscellaneous Income", and that is all it shows as to his business or profession. I knew Mr. Flanagan was a gambler. He told me he was. I used this phrase "Miscellaneous Income" to describe his income. He probably did not specify this particular phrase or combination of words. He just told me he was a gambler and had a net income of \$5,280 and I put it down and made out his return. I believe I did make a return in the year '33 for Mr. Flanagan. I believe my work for most of these men herein mentioned has been continuous up to the year '35. I don't recall seeing the defendant Flanagan's return for the year '35 when the Government was questioning me about these documents. It has not been produced to me as a witness.

Mr. Flanagan reported the income in the year '34 on the return here, R-45. His statement as to the source was from a similar source: gambling. It says "Miscellaneous Speculative Income". I specified it on the return as such.

It might have been commonly understood it was speculative sources, running a speculative business. I did

have information from him that his income was from gambling. As a foundation for the deduction for business expense, there was written on the return "Business expense with customers and various groups we do business with". He described it in a general way, that he has had expenses of going back and forth conducting his business. I felt he was entitled to some deduction and I put this down as best we could arrive at a figure. This return itself was made in my office.

R-108, which seems to be the '35 return of Mr. Flanagan, does not indicate his business. There is no schedule of his business expenses deducted on this return. The expense was small. Each time I certified that I had made these returns and that they were made correctly from the information respecting the income tax liability of which I have

any knowledge as furnished to me by the taxpayer. I signed the usual certificate at the bottom of those returns as was required in the regulations. I was then making returns for a lot of people. We filed in the neighborhood of 300 or 350 returns every year. I do not remember distinctly whether I met each one of my 300 or 400 clients. They are clients in other pursuits, as termed "regular business" and not games; usually at their office or place of business, and these who were in business that I characterized a business from which illegal gains were made, some of them came to my office and some of them I met elsewhere. I made an appointment convenient to the distance of traveling.

As to Mr. Flanagan, I may have met him at the Horse-Shoe restaurant. I couldn't positively say so. I have met him. He has been to my office. I have never been to his place of business. That would be just a general thought that I saw Mr. Flanagan at the Horse-Shoe restaurant or at the gambling casino in connection with it. I cannot recall from memory whether I made a return for Mr. Flanagan for the year '31.

Q. Solely for the purpose of refreshing your recollection I hand you a document here that is marked R-43, and ask you to look at it and just state whether or not you did make a return for him for 1931?

A. I did.

(Said document was marked Defendants' Exhibit F-1 for identification.)

Referring to the document which is marked, it further refreshes my recollection. I sent Mr. Flanagan a copy of that return through the mail. I do not recall where I met Mr. Flanagan when I made out this return.

I made the first return for Mr. Hartigan possibly in '32. I don't know where these men were in business, directly. I believe I met Mr. Hartigan prior to '35 when I was making his '34 income tax return at the Horse-Shoe restaurant. Mr. Hartigan told me that he had then become the proprietor of the Horse-Shoe restaurant. That was after the death of Mr. Barnes. Prior to that Mr. Barnes had been operating that restaurant, then when he died Mr. Hartigan became the proprietor, I believe. Mr. Hartigan's return for the year '34 was made out by me at his restaurant there on North Kedzie. The books were sent to my office prior, or either I picked them up at the Horse-

Shoe restaurant and took them back for the convenience of working at my office. I made out his income tax return for the year '34 and then mailed him a copy of it; I don't remember whether he signed the return in blank before I filled it out or whether he came to my office after that and signed it. That was quite a common practice for 605 clients to do that. In the '34 return, which is R-52,

the source of Mr. Hartigan's work is specified in type-writing as "Miscellaneous Speculative Income" and then there is underneath those words in parentheses in pen and ink the word "Salary". That word "Salary" also was written on there by one of the employees in my office. Mr. Hartigan did not write it there. He did not know it was written on there until the return was filed. I don't believe I had before me such books as Mr. Hartigan furnished me from his restaurant when I made out his 1934 return. I believe for the year 1935, I believe Mr. Barnes died late in '34 and there was a return for that in the name of Mr. Barnes up to the date of demise. It is possible that I had the books for whatever portion of the year Mr. Hartigan operated the restaurant for '34, if there was any such period.

The one for '35, R-53, shows on the top item the source of his income is miscellaneous income. That is under Number 1 on the income sheet in the blank space below the number. There is attached to this return a schedule which shows an operating loss from the restaurant. The expenses exceeded the net income, so that the net income was reported none taxable. These are returns for '34 and '35. I don't believe I have the returns for '32.

(Document marked Defendants' Exhibit H 1 for identification.)

I prepared the carbon copy of the return for 1931 for Mr. Hartigan that you handed me, which is attached to the letter which has been marked Defendants' Exhibit H 1. I did prepare a return for Mr. Hartigan at my office. There is no jurat on this copy. That letter is dated March 8,

1932, so therefore the return had been mailed and 606 made. I would say that the return was prepared and filed some time shortly prior to March 8, 1932. The original should be in the files of the Treasury Department. I filed it.

(Document marked Defendants' Exhibit H 2 for identification.)

You hand me a letter dated April 4, 1933, marked Government's Exhibit H-2 for identification, together with what purports to be the carbon copy of the income tax return of James A. Hartigan for the calendar year 1932, which refreshes my recollection as to preparing a return for Mr. Hartigan for 1932. This return was prepared prior to the last filing date of March 15, 1933. That was prepared in my office, and Mr. Hartigan had undoubtedly signed the blank and left the information with me to fill out the return and file it. He undoubtedly left with me money in excess of what the taxes were computed. That letter shows I am returning to him \$7.00 which he had left with me more than I needed to pay the taxes. During the years '31 and '32 Mr. Hartigan was a gambler.

Q. Now, I notice on the return for the calendar year 1934, in addition to the word "Salary" being written on there in pen and ink, there is specified up here in that top bracket, after the words "All other", which I assume means occupations, the word "Manager"?

A. Yes, sir.

Q. And you wrote that in there, I suppose?

A. That was typed in.

Q. Mr. Hartigan hadn't changed his occupation in '34, from what it had been previously, so far as you know, had he?

A. He had broadened his scope of income.

607 Q. Well, you still said his income was miscellaneous speculative income, didn't you?

A. Truly.

Q. You were using the word manager just as a word to describe a general activity, which wouldn't disclose on the face of the return what business he was in, is that right?

A. That is right.

I did not write anything as to what his business or occupation was in 1935. There was later a check-up on Mr. Hartigan's '35 returns on this restaurant loss that was claimed, and Mr. Hartigan turned over to me the books of his restaurant to adjust that with the Internal Revenue Department. I believe the books were returned to the Horse-Shoe restaurant. Mr. Hartigan came to my office some year or so later to ask what had become of his books. My best recollection is that I told him I had sent them up to the Horse-Shoe restaurant. He might have said, "Well,

that has been closed. I have never received the books." I know he did not have the books when he was looking for them at a later date. The books were lost some time ago and he was trying to find them in talking to me about it. I believe that Mr. Hartigan always gave me the full sum to pay his taxes for the year when he filed his return.

Q. And in one year he got a notice from the collector that his quarterly income tax payment was due, didn't he?

A. I don't remember specifically.

Q. Well, I am not asking you to remember specifically, but Mr. Hartigan called you and said "I got a notice on a quarterly income payment that is due"?

A. I talked to Mr. Hartigan at different times. I don't recall definitely whether that was a topic of conversation. It could have been.

608 Q. Wasn't there some explanation by you to Mr. Hartigan, there must be some mistake, I will check it up and take care of it, because I know you did pay your full year of tax?

A. That is quite possible.

A great deal of that money was left with my associate. After all, I was in and out of town quite a bit. In fact, I think in certain months of the year I was out of town most of the time on business. I see possibly how it all could have occurred. If I had a conversation of that kind, I would find it out. I would check up and, if so, we would correct it. I don't recall specifically its having taken place.

I remember that I made returns for Mr. Andrew Creighton. I went out to his place at the Southland Club. Mr. Creighton came to my office. The first time was possibly in '33. I would not know if I made a return for him prior to the calendar year 1933 unless I could see my records or some work papers. I do not recall the exact year. I do not have records and work papers on these returns. Some of the records are in the possession of the District Attorney's Office. Mr. Creighton came to my office about the return for the year '33, R-58. He talked with me about his business. This might be the first time I was introduced to Mr. Creighton. I believe Mr. Johnson introduced me to Mr. Creighton in my office. I don't know whether it was at this time or prior that I was introduced to Mr. Creighton by Mr. Johnson. Mr. Creighton gave me the facts himself about his income tax return. He did not tell me to go down to Stein-Alstern's office and get the facts concerning

certain brokerage transactions in this particular year. I don't remember that he gave me facts with respect to going to his bank and getting the information from his bank account. This return shows that his income is for miscellaneous commissions. That is all it shows about his business or anything else. The same is true for the return for 1934, which is R-59. R-60 does not show what his business or occupation is, and for the year '36, R-61, that shows miscellaneous earnings as the source of his income. That appears under Item 1, under Income, typed in there. There might have been a prior year when Mr. Creighton told me to check the records of the brokerage house of Stein-Alstern for facts respecting some brokerage transactions he had there, because I notice on your exhibit for the year 1933 that his former years were filed on the delinquency basis.

I believe I had sent one of my men to Stein-Alstern to get a transcript of Mr. Creighton's record. I don't remember having done it offhand. I believe I did go to the Mid-City Bank and check his bank account there for the years prior to '33. I believe we checked up the banks he specified that he could have had accounts in and at the brokerage offices he might have had brokerage accounts in. We would get a letter of identification to go there. I recall that there was some compilation of figures or information. I don't recall from memory without my records to what extent.

I continued to file income tax returns for Mr. Creighton until 1937. I believe there was a discussion with Mr. Creighton, or something of that nature, about his receiving a notice of quarterly payments due after he had paid his full tax at the beginning of the year. He called my attention to having received quarterly notices in June, September, and December after he had given me the money to pay all his tax at the beginning of the year. The 610 funds were left with my associates to take care of.

Something of that nature happened. I knew Mr. Creighton was a gambler and when I used the term on his returns of miscellaneous earnings that meant gambling earnings, Mr. Creighton did not tell me how to describe them. He asked me.

Q. And you told him that was all right to put it in that way?

A. It sounded like a general term.

I believe I first started to file returns for Mr. Kelly in 1933. I believe I filed a return for 1933. I have not seen it in these investigations. Mr. Kelly signed the return for the year 1934, marked R-14, and gave me the information and the money to pay the tax, and then I made it out and mailed him a copy. That pencil writing on the front of the return is evidently put on by the conferee in conference. I never denied these men were gamblers in conferences. I didn't put it on. Kelly didn't put it on. It is evidently Government's notations.

Q. So that where this word "gambling" written in red pencil after the word "occupation" appears on R-14, that is somebody's else writing other than you or Mr. Kelly or anybody in your office?

A. That is the outcome of my statement to the examining officer in conference. I am positive. They have always asked that and I never denied it in conference. They asked me what Kelly's business was and I said he was a gambler and then they wrote this on here, evidently the man in front of whom the conference was held. Unless there is a name there, I couldn't tell from here. This income tax return shows in typewriting the source of Mr. Kelly's income as miscellaneous commission earnings and then there is written in pen and ink in parentheses 611 after that the word "Salary", and that was written there outside of Mr. Kelly's presence, so far as I know, without his knowledge. It is not my handwriting. Neither is it Mr. Kelly's handwriting. It is Mr. Solomon's, my associate. All these notations on here in red pencil seem to be made by the same person and they were probably all made at the investigation of the return later on.

Mr. Thompson: We specifically move, your Honor, to strike out this exhibit for all the hearsay statements that is written on there. R-14, I think you have. The statements are certainly binding on no defendant. Certainly not all of them. All of them except Mr. Kelly, and not on him even.

The Court: What do you say about this?

Mr. Hurley: May I see it, your Honor? We can with hold this temporarily, your Honor, until we see what happens.

The Witness: I used general terms to describe general activities. I commenced filing income tax returns for Mr. Wait possibly in 1930 or 1931. I filed for him earlier than

for some of these other individuals. He was part owner of the Lawndale Greyhound Association or Park. That was a racing track on 26th Street. I did not file an information return for the partnership or association. I had nothing to do with filing any return for the partnership. That was Mr. Wait's distributive interest from that partnership venture. I know a partnership return had been filed. I have not seen those original returns since this investigation and preparation for trial started. I don't know where they are. I believe I have seen a return for Mr. Wait for a year earlier than 1935. The return R-81 for the year 1935 shows his net receipts from business. It does not designate his occupation in any way. That was made in the same general way that I made all these others

I have been testifying about. We did not make the 612 return marked R-77 for identification. I believe we made one after that. I did make the return marked R-80 for identification for the year 1932. I possibly made return prior to 1932. I did not make any returns after 1932 and prior to 1935. I think there was a lapse between the two years we didn't do any work. Mr. Wait had me check some figures at the brokerage house for him one time. I believe it was in the year '32 that you have an exhibit there of. We did check the brokerage statements and it is quite possible it was Stein and Alstern.

The first time I made a return for Reginald E. Mackay I believe was in 1934. I made a return for Mr. Meade prior to that. Mr. Meade introduced me to Mackay. I have never been to Mr. Meade's place of business. He always came to my office. Mr. Meade and Mr. Mackay always came there to my office. The first return I filed for Mr. Mackay was for the calendar year 1934, and that is R-24. It shows two sources of income; one is salary, wages, and commissions, and another is from rental income. The next year, 1935, R-25, shows as the source of his income one item under Number 1, miscellaneous earnings, and income from rental sources. I do not remember Mr. Mackay telling me when he came up to make his 1935 return, that he had bought Mr. Meade out and was running the place of business himself. I don't know the name of the place Mr. Meade operated. I know Mr. Meade left town because of ill health. I have no knowledge of who succeeded Mr. Meade. I testified that I told these men they must keep books of their income in 1934. After that I continued to

make out their returns for 1935 on the same sort of memorandum that I had made them out for 1934 and prior thereto.

613 Q. Now, in all these conversations that you say you had leading up to your coming on the stand as a witness was there any suggestion made to you that your license to practice before the Department of Internal Revenue was in jeopardy if you didn't testify to suit the Government here?

A. No, sir, not in terms of that nature.

Q. What was said, Mr. Brantman?

A. Just general conversation that as a man admitted to practice before the Treasury Department I was looked upon as being the equivalent of a government representative and should conduct myself accordingly.

I am licensed to practice before the Department of Internal Revenue. I am also licensed to practice as a public accountant in Illinois since the inception of the Act. I have never filed to practice before the Board of Tax Appeals. I am licensed to practice before any of the government departments except the Supreme Court. I have never filed for practice before the United States Court of Tax Appeals. I am licensed to practice in any of the reciprocal states who have reciprocal acts for accountants licensed to practice in a given state.

I know Mr. Elmer Johnson. He was up to my office some time back to inquire whether I had copies of Mr. William Johnson's income tax returns prior to 1929, and he also was up to check some facts with regard to some prior payments. The papers were not there then and I couldn't give him the information.

I don't know where Mr. Love was working at the time I met him. I met him through Mr. Barnes. I believe Mr. Barnes called Mr. Love in to sit down and give me the details of the restaurant because Mr. Barnes wasn't
614 very good at sitting down at details. I believe he was ill at the time. I don't recall that he called his club Senrab. Barnes was at 4750 and 4701 Kedzie Avenue at different times and Love was working for him. I would call Love if I wanted any information on the restaurant. Barnes called Love in to give me different information. I made a return for Love at that time.

Redirect Examination by Mr. Hurley.

I stated that when I prepared these income tax returns I had a blank that was signed by the taxpayer, then I sent a carbon or a copy to him by mail. I believe I did that in the case of Kelly. Kelly never complained to me about being designated as a clerk as shown on Government Exhibit R-15. He did not complain about being designated as a manager on Government's Exhibit R-16 and ask to have the records changed in the Collector's office. We sent copies of tax returns to all of those I have testified about and the copy sent was an exact duplicate of the one filed with the Collector, made at the same time. Hartigan never did complain that he didn't get a salary and did not ask to have Government's Exhibit R-32 changed. It is quite possible that the word or term "Salary" may have appeared on his duplicate. Then, again, it may have been placed on there by someone in my employ. I have sent him an exact duplicate of the one filed with the Collector. Mr. Sommers did not ask me to have the occupation "Manager" appearing on Government's Exhibit R-38 changed in the records of the Collector. There were no complaints by any of these individuals for whom I say I filed returns after I sent them a duplicate. They did not ask me to make any changes in the records. I do not know whether or not 615 these men for whom I filed returns were employees of Johnson. I believe I did meet some of them elsewhere than at my office or the Horse-Shoe restaurant. I saw a few of the men that I filed returns for at the gambling room in close proximity to the Horse-Shoe restaurant. That is the same gambling room in which Johnson introduced me to Sommers.

I have talked about the Sullivan case and I answered questions by defense counsel that it was after the decision in the Sullivan case that I talked with Johnson. That was in the year '32. I do not know that the Sullivan case was decided in 1927, but the intimation of a case of that kind would be talked about from time to time. It may have been that the decision was not final until a later date. I am not positive as to that. I would have to refresh my memory.

This campaign that I speak of by the Government came about 1932. I would hear it on various visits to the Revenue Department on other examinations. It could be that it was general conversation between revenue agents and men from the Collector's office.

I was questioned by counsel about the conversation I had with Johnson as to this Sullivan matter. I had a conversation with Johnson in my office. I was not at that time acting as a tax consultant. I was handling his tax matters. As a tax consultant I figured that it was my duty to advise him in regard to tax matters, and I was told at that time that the Government did have such a campaign on as to persons having illegal gains, as I term it, and I would not make it a practice to tell anyone other than a client or advise others along those lines. I wouldn't stop a man on the street and tell him about it. I generally term men 616 "gamblers" if they work in a gambling house or if they take part in a gambling play, and would term them in that same line. I knew many of them were just working in gambling houses.

Mr. Thompson: That is objected to. How could he know?

Mr. Hurley: He says he knows.

The Court: Let it stand.

I was questioned by counsel about the form of these returns and the fact that they were accepted by the Collector. As a matter of fact, the Collector will accept any return that is filed.

Mr. Thompson: We object to that.

The Court: Overruled.

Mr. Thompson: Calling for a conclusion. We made no such questions nor did he make any such answers on the cross-examination.

The Court: Overruled.

You could prepare a return and put it in an envelope and send it to the Collector and it would be accepted by the Collector. I am speaking for the duties of someone else. I don't want to be positive as to the point that the Collector might not return them if they are incorrect returns. I mean there might be an investigation later, but the Collector is forced to accept any return that is sent to him if addressed to him. In later years income tax returns become public property.

I was questioned by counsel as to the returns of the defendant Flanagan. I don't know exactly where he was working, but I knew he was not working at the place I met him. I don't know where he was working on the west side. I later learned he was working at 4026 Ogden Avenue. I

have heard it called a gambling house. I stated with 617 reference to some of these returns where the occupation was designed as "Manager" that it was just a general term. By that I mean in that type of business a man might have certain activities; he would handle a bank roll. Naturally, he was managing the funds, responsible for them. In that parlance or term, he would be termed the "Manager", manager of a fund. After all, gambling is just funds. I don't recall that they told me he managed anything else. They probably managed the room in which they were identified or located at, gambling houses where they were working.

I know the handwriting on the face of Government's Exhibit R-14. It is the deputy who made the examination. I see the initials "P. U." I believe it is Mr. Updike of the Collector's office in this building. I believe I was present when the writing was placed on that document.

Mr. Kelly received a letter from the Treasury Department. I believe he forwarded a letter to me to appear for him and conduct this examination. Shortly thereafter I went to the Collector's office. I believe the conference with the Collector's office was in Room 500 of this building. When I went into the Collector's office with reference to Kelly's return for the year 1934, I was referred to Updike for the examination. I was present when Updike made those notations on the face of Government's Exhibit R-14 while I was there at the request of Kelly. I was asked by counsel on cross-examination in relation to a certain protest by the defendant Johnson involving some \$33,000. I have seen Government's Exhibit R-109 for identification. It is a power of attorney, issued to me by William R. Johnson. He signed that. That was a power to appear for him in his behalf before the Treasury Department, at the agent's 618 office, Collector's office, and such other departments necessary in the handling of the examination. I believe that was with regard to the year '31. The power of attorney specified all years.

The Government's Exhibit R-110 was prepared by my office at my dictation. William R. Johnson signed it. I believe he read it before he signed it. I got that information set forth in that document by collaboration with Mr. Johnson here. I was asked here about my conferences with the U. S. Attorney. I did not do anything other than answer questions put to me in this conference. I sat in a chair like you are sitting there now. You were sitting on the other side of the table asking me questions and I an-

swered them, and I submitted my work sheets in that regard. These envelopes appear here on the table and the yellow sheets.

I had somewhat similar conferences such as this in the U. S. Attorney's office in other cases. There was nothing unusual about those conferences.

BERNICE DREWEK, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 1050 West Erie Street. I have been employed by the Collector of Internal Revenue here in Chicago for about three and one-half years as a stenographer. I have been a stenographer for the last seventeen years. I graduated from High School. I have a commercial course. I took my commercial course at St. Stanislaus College. I write the Pitman system of shorthand. In the course of my duties as a stenographer in the Office of the Collector 619 of Internal Revenue, I have had occasion to take statements where questions were asked and answers were given in the Intelligence Unit. That is on the second floor of this building. I did have occasion on or about January 3, 1940, to take a statement from a person known as William P. Kelly. I see Mr. Kelly here in the courtroom. Special Agent Converse, Mr. Kelly and myself were present. Mr. Sommers, a special agent, came in about the middle of the testimony. He came in toward the end of the proceedings. I recorded the questions and the answers as they were given in shorthand. The answers were made by William P. Kelly. After I had taken the questions and answers down in shorthand, I left the room and transcribed them immediately thereafter.

Government's Exhibit 208 is a correct transcription of the shorthand notes I took of the questions asked and the answers that were made by William P. Kelly.

Mr. Hurley: I offer Exhibit 208.

Cross-Examination by Mr. Hess.

I put in this statement everything that was said in the questioning of Mr. Kelly. After I got through typing the statement, I submitted it to the special agent. I have seen it about two weeks ago to compare it with my notes. Ex-

hibit 208 is not a re-copy. It is a transcription of the notes that I have taken at the examination. There was no one present there, other than the persons I have stated. I have been in the corridor and the hall of the courtroom prior to taking the witness stand. I have not been talking to anyone about the person whose statement I took. No one pointed him out to me. I knew him. I had only taken one statement on that day. It is the custom in my employment to take 620 statements as a stenographer. I only took one that day.

I don't believe I had taken any that month, but I had taken some prior to that. During the winter I took a lot of statements for the agents. I had taken some in October. I am able to identify those persons after six or eight months without anyone pointing them out to me.

Mr. Hess: I think it is admissible as to Mr. Kelly. As to the others it is hearsay and not binding on them.

Mr. Callaghan: If the Court please, there are some statements in the document that ought to be taken out. I refer to page 5, the ninth question reading from the bottom, and all questions following. As to the admission of these, we object.

The Court: I do not see anything wrong with it. It may be received as to William P. Kelly only.

(Thereupon GOVERNMENT'S EXHIBIT 208 was received in evidence as to William P. Kelly only and read to the jury, which Exhibit is in narrative, as follows:

621 My name is WILLIAM P. KELLY; reside in Oak Park, Illinois. I am a gambler by occupation. My place of business is near the corner of Dearborn and Division known as the D & D Club. I am the owner of that business and have been for a little over three years. I do not know who owned the place before that, but there was a gambling house there some time before me. I did not buy off this other business.

I have an account at Prairie State Bank, Oak Park, Illinois, jointly with my wife, and a safety deposit box in the same bank. I have another at City National Bank, LaSalle and Adams. Nobody is associated with me in my business.

I know William R. Johnson; he hasn't any interest in my business; he gambles there; he takes over the game. The circumstances that would bring him in are that I would call him up when it got too heavy for me handle. I made no charge for this and was glad to get it off my hands when it got too big. I employed a various number of men at the D & D Club—sometimes eight or ten, and

sometimes I might employ a hundred to a hundred twenty-five.

I have operated craps, wheels, blackjack and horses; by wheel I mean Roulette; by horses, I mean handbook. I have Chuck-a-Luck which is known as Bird-Cage. I don't keep any records and don't deposit money from the business.

I have no interest in any other gambling house; no loans due me from other persons, and I made no loans within the last year to any person. I own no stocks or bonds; I have a \$1,000.00 life insurance with Knights of Columbus. I have no annuities. I file income tax returns and have as long as I can remember.

I cash the checks that come into the business at Lawrence Avenue Currency Exchange, which is about a 20-minute drive. Jimmy Hartigan solicited me to give my business to Lawrence Avenue Currency Exchange. Jimmy told me he was interested in that exchange and asked me to give it a little business, which I did. At the exchange I transacted business with Mr. Brown. I knew the girl that was working there; knew that she was related to Jimmy by marriage, but I did not know what relation.

I have no children; I rent the premises where I reside for \$57.50 per month.

Prior to using Lawrence Avenue Currency Exchange, for a short time I used a currency exchange on Kimball Avenue just north of Lawrence. I might have used that currency exchange four or five months, and it might have been ten months. I used the Lawrence Avenue Currency Exchange from shortly after they opened up; I don't know the exact date. The rate there was the same as any other exchange—25¢ a hundred. I carried my checks there and sometimes sent them; I usually took them myself to the Lawrence Avenue Currency Exchange. When I was dealing with Albany Park Currency Exchange, I sent them. I got currency the following day or sometimes two days later. I kept no record of the checks that I exchanged. I can't say what percentage of the business I did was done by checks, but the checks exceeded the cash transactions.

I paid no protection for my gambling house. I have been raided occasionally; some arrests, and was represented in Court by a lawyer named Beiber. William Goldstein never represented me.

I do not subscribe for the Waukegan newspaper and have not been solicited to subscribe.

623 My home telephone is Village 9133 and it is listed in my name, where I can be reached at any time. If I am not there, my wife will get the message for me.

624 HELEN GREER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Helen Greer. I live at 6156 Minerva Avenue. I was at one time employed by the Government as a stenographer in the Intelligence Unit for six months. I had worked as a stenographer prior to that time in the Public Health Service, for seven years. Before that I worked at the Internal Revenue Office for four years. My experience as a stenographer dates back to 1922. I had four years of high school. I took a stenographic course in high school, but none other than that. In my work as a stenographer I had experience in taking statements and in that regard I took down in shorthand questions that were asked and answers made. I took a statement of a person known as Jack Sommers in the month of December, 1939, at the Intelligence Unit. Special Agent W. H. Summers, Mr. Converse, Jack Sommers and Mr. Clifford, Internal Revenue Agent, and myself were present. At that time there were certain questions asked of Sommers and answers made by him to those questions. I took the questions and answers in shorthand. I transcribed them on a typewriter. I don't suppose it was more than two or three days after I took the notes that I transcribed them.

I have seen a document marked Government's Exhibit O-210 for identification. That is a true and correct transcription of the notes that I took of the questions that were asked Jack Sommers and the answers that he made to those questions. I see the Jack Sommers I took the statement from, in the courtroom (indicating the defendant Jack Sommers).

I did, in my work with the Intelligence Department, take a statement from the person known as James A. Hartigan. It was the latter part of December, 1939. Special Agents W. A. Summers, Mr. Converse and Internal Revenue Agent Levine, and myself were present.

At that time there were questions asked of Mr. Hartigan and answers made by him to those questions. I took down the questions and answers given in shorthand, and transcribed them on a typewriter. Government's Exhibit O-209, for identification, is a true and correct transcription of the questions that were asked and the answers made by Hartigan. I see the man, James A. Hartigan, that I took the statement from here in the courtroom (indicating the defendant Hartigan).

Mr. Hurley: I will now offer in evidence Government's Exhibit 209 and 210 for identification.

Mr. Thompson: As to Government's Exhibit for identification O-209, which purports to be a statement of one James A. Hartigan, Defendant Johnson objects on the ground that it is immaterial, tends in no way to prove any of the issues in this case, contributing nothing as to what income he had or what was taxable for the years '36, '37, '38, and '39; it is hearsay as to the Defendant Johnson; and particularly any reference made to the Defendant Johnson is objected to.

And while we are at it, we make the same objection on behalf of the Defendant Johnson as to Government's Exhibit O-210 for identification, which purports to be a statement of one Jack Sommers.

Mr. Hess: We object, if the Court please, as to 209 as to all defendants except Hartigan on the ground that it is not binding on them; it is not shown they knew anything about it, had no connection with it, and doesn't in any way implicate them in any alleged aiding and abetting as charged in the indictment; and as to Hartigan we object on the ground it is immaterial to the issues in this case, and it is past narrative, something that has been going on.

626 As to Exhibit 210 we make the same objection as to all defendants, except Jack Sommers, and as to him it is on the ground of immateriality, and narrative of past actions, the other defendants are not bound by it, not shown to have any connection with it or any knowledge of its contents.

The Court: As to Exhibit O-209, purporting to be the statement of the Defendant Hartigan, the objections of the Defendant Hartigan to that exhibit will be overruled. Objections of all the other defendants will be sustained.

Mr. Hurley: On that point, your Honor, I would like to

make this contention, that it is a part of the conspiracy, this man coming in here and making a statement as he did.

The Court: As to Exhibit O-210, purporting to be the statement of the Defendant Sommers, the objections of the Defendant Sommers will be overruled. Those of the other defendants will be sustained. 209 will be received against the Defendant Hartigan; 210 against the Defendant Sommers.

(Said instruments, so offered and received in evidence, were thereupon marked GOVERNMENT'S EX-627 HIBITS O-209 and O-210, and read to the jury.)

Exhibit O-209: (Narrative Form.)

My name is James A. Hartigan; reside at 2825 Maple Avenue, Berwyn, Illinois; am a gambler by occupation; have been in that line 25 or 30 years. I understand that anything I say during this interview may or can be used against me by the Government as it sees fit, and am willing to answer any questions put.

I last operated a gambling place at 4000 North Avenue—Harlem Stables, which I operated off and on for three years. I have been the owner of that business since 1936; don't own the building. I have there operated Keno, crap games, roulette, black-jack, horses, red and black. No one is connected with me in the operation, and I am the sole owner of the business. There have been times when the crap games got too strong for me that I would send for William R. Johnson for help. I would call him up and he knew they were playing beyond my bank roll, and I would point the table out and turn them over to him. He assumed the losses and he took the winnings.

Q. Mr. Johnson is known as a professional crap shooter, is he not?

A. That is his long suit, although he does other gambling too.

I file Social Security returns for my employees when operating. They number from 60 to 150, according to business conditions, and vary from \$4.00 to \$15.00 in salaries per day. I pay off every day.

A floor man is a straw boss; he oversees and received \$15.00 per day. I have door men, but I generally handle any trouble myself; we don't have much of that. I don't allow anybody in that had been drinking, or anything like that. The door men are paid from \$7.00 to \$10.00 a day, depending on the length of service. The man who operates the Keno game gets \$5.00 a day.

Men selling cards get \$4.00 a day; dealers of black-jack and crap \$7.00 to \$10.00 a day.

The names of the floor men at Harlem are Reilly; Zel-nis; Hanley; Bartel; Indes, and we have two or three more at different times. If a game opens, I may take a dealer. I have no connections with any other gambling houses or similar places around town; have no connection with Horse-Shoe run by Jack Sommers, or the Dev-Lin, but I go there a lot; no financial transactions through it.

When we close at night, I put some money in my pocket and some I put in a safe. As a general rule, I leave bank rolls for the next day. I have no Brinks or Armored Car service, just my private safe; and no bank account. Any checks I get in I cash at the Lawrence Avenue Currency Exchange operated by Mr. Brown; prior to that at another exchange within 3 or 4 blocks.

Mr. Brown has been closed for several months. He did not owe me any money. I would take the checks there personally and I would get the money the next day.

I own a Cadillac, 1936; purchased, Oak Park. My wife has a small Buick; I have no bank account; my wife has no bank account. Both of these automobile purchases were cash transactions.

I own my home purchased in 1933; I believe purchase price was around \$5700.00, and I assumed some back taxes and improvements.

629 Prior to taking over Harlem Club, I gambled at different places; had no single place of business. I just went from one smoke shop to another, back rooms, alley crap games, race tracks, anything that you can make a bet and win. I was always successful. I had never been the manager of any place of business.

My home telephone number is Berwyn 2501.

I never used any other name. I resided at present address about 6 years. The title to that property is in joint tenancy with my wife; it is clear. I have no business address. My legal residence has always been Cook County. I am 46 years old. I have operated the Harlem Stables 3 years and never worked for anyone else within the last ten years. Never got a salary from Bill Johnson.

The checks that I cashed at Lawrence Avenue Currency Exchange came to me by my cashing them. I have more checks than what my business would be; I am liable to cash \$1,000.00 worth of checks and if they wouldn't be good, I would be the loser. When I cash a check it does not necessarily mean that I won the full amount. If I would see him

cash out, I would return the check to him. Various times he may cash out three or four times—day \$25.00, \$30.00 or \$40.00, and I wouldn't be able to get it back to him. I cash checks for people in small amounts that they want cashed. Sometimes they want cash to go home with; it has no bearing on what they win.

Neither myself nor wife have had any bank account since the banks started to go under some years ago. I have \$5,000.00 Veterans Insurance—Government; no annuities; might have a few small loans due me, but nothing to amount to anything. I don't hold any notes, and never have 630 had any in the last 10 years. I made no loans to other people in the last 6 years, and have no trustee account for myself or my wife, and no bank accounts in other names.

I have 10 or 20 shares of Peoples Gas stock and get \$10.00 or \$20.00 a year dividends. I never filed any statement of assets and liabilities with banks or trust companies; I acquired the Cadillac in 1936, I believe; wife's car, I believe, in 1938. I purchased no other property besides these cars and the home within the last 6 years, and I received no gifts or inheritance in that time. On the Cadillac, I traded in a Chevrolet coupe. I think it is a 1937 Cadillac purchased in 1936. I have no other sources of income except gambling; was married in 1921; have no children; only been married once; my wife's maiden name was Jessie Downey. She is no relation to William R. Johnson; have no dependents under 18 years, or other dependents of any nature. Own no mortgages, and the only real estate that either myself or wife own is our home.

I recall having been interviewed by a revenue agent with regard to my 1935 income tax return when I claimed depreciation on my Cadillac car. At that time I had both a Cadillac and a Chevrolet. I used the Chevrolet all the time—the Cadillac was old and it was too large. I turned the Cadillac in on a Chevrolet Coupe and then we had two Chevrolets.

I have a safety deposit box at First National Bank and Madison and Crawford; it used to be the Garfield Park Bank and I think it is now the Madison and Crawford. Both boxes held under the names Jessie and James Hartigan.

631 I had the gas stock about 10 years; somebody came in and I purchased it; did not purchase it from a broker.

I first filed income tax returns in 1920; they are made up by Mr. Radomski; I just happened to know he handled that kind of work. He did it for some other fellows I know. I do not believe anybody recommended him to me; I have had him for the last two or three years.

I was operating this business solely on my own account; no one else interested in it; that has always been true. I purchased cashiers' checks at Lawrence Avenue Currency Exchange to pay some of my bills. I paid my Social Security that way. I have no charge accounts at stores; no building and loan accounts. In keeping a record of my income, I just took a certain amount of the business monthly and make a notation of what I take. I keep a memorandum book of that. The part that I don't take is the bank roll; the amount is \$5,000.00; I may have a little bit more each month. During 1937 I took \$1500.00 to \$2,000.00 a month; that would not be each month. I have not this memorandum with me. I may have the 1939 at home clipped to copy of my tax return. I have not been in business since the first of September; have been away two or three times to Park Falls, Wisconsin, twice; I went alone. I met my brother-in-law, Marvin Downey, there. He does not work for me and has not been employed recently.

McLaughlin prepares my Social Security returns every three months, of which I retain a copy. I believe he lives in Highland Park, and you would have to get in touch with him through me. These are supposed to be filed every quarter; I give the name and address of each 632 employee and the amount of salaries; they are paid the following month; I have none for the last quarter; will have to file and show we have none. I have copy for period ending September 30th at my home.

We employ cashiers—ordinarily 3, at one time. They secure bets from sheet writers on the horses; have no cashiers in the evening. The pay-off men make change for the customers. He sits by himself; each table does not pay off. We use chips and money. A man can play either with chips or money. He can buy chips at the table and can get paid off right there. He is off by himself, because if there is anything like \$30.00 or \$40.00 at a time, then money is taken from him and brought to the table. Small amounts are paid off right at the table; sometimes men at the table bring it over, and sometimes I do. There is no record of the transaction. The pay-off man marks it

down; the fellows getting the money don't give him a slip or anything.

The Harlem Stables is located outside the city limits.

I have never done anything about protection. I have not contributed to any political funds or to campaigns or anything else personally, and no one is doing it for me. I bought no tickets for any socials or balls and do not work during election time, nor have any of my men do it.

William R. Johnson and William R. Skidmore have no interest in the business being operated at the Harlem Stables, and have had none during the last 3 years; they have no connection, and no one else is interested in it. It is only so far as if my crap games get too heavy, then I call in Johnson, but he is not a partner. During the year that might happen every day for a week, and then

he may not be in for another week. When he comes 633 in, he takes over the table and all the profits of that particular table. If two tables are hot at the same

time, all of the business is concentrated at the hot table. A player will notice that dice are passing or missing, whichever they are doing, at that table; then you will have all your business concentrated at that table, and I allow no bets with the house there. They bet either way, win or lose. A man can be around the table and make bets without ever handling the dice at all; he can bet either way; that is his privilege. They don't bet among themselves. If both of us came in, I wouldn't bet with you, and you wouldn't bet with me; they can't do that; they either bet with the house or against it. We keep them from betting among themselves as that is our business; we work on a percentage. If they bet among themselves, we wouldn't have anything to do. It is the same as betting on a horse race; if you play every horse, the percentage is against you. It is handled so that in the long run, the percentage is in favor of the house. The house gets no cut in a crap game.

I have no objection to appearing before the Grand Jury.

I have been in Florida for the past week or 10 days; my business was closed, so I left. I was accompanied by my wife and my niece, Bernice Downey. Bernice Downey is still in Fort Lauderdale, Florida. We expect her back any day. I paid some of her expenses. I don't know the hotel at which she is staying; there are dozens of them there. I left there a week ago and she thought she might

be back in a week or 10 days. Just the three of us went down.

634 Exhibit O-210: (Narrative Form)

My name is Jack Sommers; reside at 6144 North Rockwell Street. I am proprietor of a gambling house, and in addition operate a restaurant at 4721 North Kedzie Avenue, and I operate Dev-Lin at Lincoln and Devon.

We operate dice games, black-jack, roulette, poker, horses, and red and black. The number of dice games varies; sometimes at one table, and sometimes we might have three going. I do not have Keno; I know what you mean. Nobody else is associated with me in my business; I am alone; I have no partner. I have been operating gambling houses for 6 or 7 years; I didn't originally open the Dev-Lin; a man named Wait had it and I bought it from him for \$5,000.00. I opened the Horseshoe at 4721 North Kedzie Avenue. I do not know that it had previously been operated as a gambling house.

I have no relations with William R. Johnson; he does come to my place, to gamble; I invite him in. When the plays get too heavy for me to handle, he handles it for me. When someone wanted to shoot crap for more than I thought I could afford, I would telephone Mr. Johnson and he would come in and take over the crap game. He would not pay for the privilege; I was more than glad to have him.

I would cash checks that came in for \$100.00 or \$200.00, if I knew the man; then I would cash the check. I would take them to an exchange and get the money—the Lawrence Avenue Currency Exchange. Prior to that, at another located at Kimball and Lawrence. Mr. Brown 635 had charge of the Lawrence Avenue Currency Exchange. I do not know his first name; I do not know if he had a partner. I know Bernice Downey is related to Hartigan, a friend of mine. I know a few Downeys. I don't know them by first name; one is Pat; there are four or five of them. There is a Brad, Fat, Woos—that is the only way I know their names. My employees vary—at times 100 and at times 25. I had box men who sat between the games, or overseers—two of them. I kept Social Security records and have duplicates; I am willing that Mr. Clifford examine them. I have records of the restaurant operation—they are right up to date. I will locate these for 1938, 1937 and 1936 for Mr. Clifford's examination.

I will produce the Social Security records for your purpose. I carry my Social Security account at the Northern Trust under my own name. I have been operating the Horseshoe Restaurant about 7 years and during that time had no bank account.

I started cashing checks with Brown about the first week I was in business, and prior to that I cashed them with Mr. Marcus on Kedzie Avenue. I cashed quite a few checks with Northern Trust, but had no account there; I just went in and cashed checks. I knew no one there, they just cashed them without question. If a check came back, they called me. Then they thought I was doing a banking business and they stopped me. It was through Mr. Hartigan's solicitation that I transferred my business from Marcus to Brown. When I got checks during the previous evening at the Horseshoe or Dev-Lin, I would take them to Brown or Marcus. Checks taken to Brown could have come from the Dev-Lin; took them over personally, not by messenger.

These checks would not represent the amount of money 636 the men lost in my place; a man might come in with a salary check of \$200.00 or \$100.00 and lose that check and I might cash \$25.00 of that. Again, he might come in with \$100.00 in currency and want \$50.00 more and write a check for \$50.00 and then go on again. The amount of money taken in in checks would not represent the amount lost. I can't say if more money would be played in checks than in cash. People who had been coming in four or five years—we would get to know something about them. I did not cash checks for other fellows who were operating. I would not cash checks for James Hartigan and then pay 25¢ a \$100.00 to cash them for me; that is what I paid Brown and Marcus.

Proprietors of other gambling houses came and gambled at my place; not Hartigan; different bookmakers would come in. I never saw Kelly who runs the D & D in there. Creighton has not gambled in my place; but I have been in places where they have gambled. They would go in and buck the game just like others.

I understand I do not have to make any statements here unless I want to; that I have certain constitutional rights, and that any statement I make may be used against me by the Government; but so long as I am answering questions, I would like a copy when it is over to know what I have answered. I have nothing to conceal. Any statement I make is made voluntarily.

I have never used any other name than Jack Sommers, and I reside at 6144 North Rockwell since May, 1939. Before that I resided at 6146 North Washtenaw Avenue.

637 I have never had any business address other than 4721 North Kedzie Avenue or the Dev-Lin at Lincolnwood.

I don't own the premises on which the Dev-Lin is located; I lease it. I pay \$250.00 a month rent, which I have been paying each month since I have had it. I can't tell you the exact date when I took it. I leased it from John Engslar. He has never had any trouble collecting his rent. If he wanted possession of it at any time he could have it. I have made no improvements; I might have put in a window for more ventilation, or something like that.

I rent the premises at 4721 North Kedzie from month to month. I have been there about 4 or five years and rent from Mrs. Chalmers. I do not know if she owns the premises; she gives me a receipt. I pay the rent in cash—\$45.00 for the restaurant and \$200.00 upstairs, plus \$7.50 for the water bill. The restaurant is on the first floor and the club on the second. There is an entrance from the restaurant to the upstairs coming into the hall.

My legal residence has always been in Chicago. I am 37 years old; married; have been married twice—the last time in 1931; have one daughter by my first wife; she is 17 and lives with her mother. My second wife's maiden name was Margaret Brandenburg; she was married before. Her married name was Butow. My mother is dependent on me. She resides at 5326 North Kimball. My sister was dependent until the early part of this year when she got married. I had my mother-in-law live with me for 7 years and she has been dead about a year now; my sister lived with my mother. She was dependent because my dad died seven years ago. I have no other business outside of the

Horseshoe and Dev-Lin. I keep no record of my daily 638 receipts of gambling, but I do of my restaurant business; one is legitimate and the other is not.

The only bank account I use is the Northern Trust which I only use for social security. My wife has a checking account in Northern Trust; it has to do with the building we are interested in. It is in both our names; it is for the building only. We own the building where we reside which we acquired about May 1, 1939; three apartments and a basement flat there. We live on the second floor; the receipts from the rent are deposited in the Northern Trust

joint account. I borrowed no money nor loan any, nor maintain any trustee accounts in the past six years. My wife has no special account. I never filed statement of assets and liabilities with any bank. I purchased a \$750.00 Government bond in the past six years, and I have an annuity which I have had for three years with the New York Life. The value is \$1500.00, and it is worth \$1260.00. I paid in \$500.00 for three years, making a total of \$1500.00. I was supposed to pay \$500.00 a year for 20 years; I would pay in \$10,000.00. That would have paid \$187.50 a month as long as I live—maturity at 65. I was 34 when I took it out. The money could be had in a lump sum at 65, or it could be divided in any way I would specify. In case of death, my wife would get \$187.50 a month or the total amount. She is the beneficiary; she would get this until the money was exhausted. If I had paid in \$5,000.00, she would not get more than \$5,000.00. They have cancelled the policy—it is worth \$1260.00. One premium was due in October—I have not paid it; I will try to make some money so I can pay. I didn't like to tie up that much money since I am not sure I am going to keep it. I feel it would be better to buy a bond.

639 I have some real estate at 99th and Drexel worth about \$400.00. I have 10 shares Curtiss Publishing acquired about two years ago through the Northern Trust. I have purchased no other stock through brokers; those are my only assets. My wife has inherited \$800.00 from what her mother left. I received this during 1939. There are no encumbrances on the house in which I live. The purchase price was \$18,000.00. I have no other income; own no mortgages; have a safety deposit box at Northern Trust; it is in the name of myself and wife. It is used for securities and cash at times; there is no currency in there now.

Mr. Radomski prepared my income tax return last year; before that Mr. Brantman. There was no particular reason for changing. I was introduced to Brantman by Johnnie Schiffman. I have no partner in my business; I own it 100 per cent. William R. Johnson or William R. Skidmore have no connection with the operation, and no one else has any interest in it and I have no partners. I have not used cashiers' checks or certificates of deposit. I have \$2,000.00 life insurance with Metropolitan taken out about 7 years ago. The premium is around \$120.00 a year. I have no building and loan accounts and have been out of

business since about September 20th, since which time I have been here in Chicago. I have had a little domestic trouble and have been at my mother's for the last six weeks; my wife has not been with me. I have not been out of town since September 20th; I receive my mail at home. My mother lives at 5326 Kimball where I have been staying since last September on account of domestic troubles.

640 If I had paid protection, I would probably be open now. The police closed me; I was arrested by the States Attorney. The local police closed me around September 20th or 25th when I was then operating a store in the 4600 block. I think I closed the Dev-Lin late in summer; I didn't operate at all in September. When I was operating in the city limits, I paid no protection. I have never given anybody any money to pay protection for me as far as I know; nobody ever paid any protection for me. Never made contributions to individual officers or police captains. I bought a few tickets for police meets.

The Ward Committeeman at 4721 is a man named Jensen, and I never talked to him.

I have not seen Brown lately; the only place I ever did see him was in his place of business. If I do see him will be glad to tell him, that you wish to see him.

I do not have cashiers in the gambling place outside of when I run bookies.

I know Orrie Alexander; I don't know where he is now. He made change in my organization. He had nothing to do with paying off the help. I gave money to my bookkeeper and paid when I went back there. If a customer wanted change, he had to go over there and get it. When I took checks to the currency exchange or bank for cashing, if it was not too much, I would get the money right away; sometimes I got it the next day. If it ran \$1,000.00 or more, I would ask for \$10's or singles or silver; something like that. The majority of the checks I got in would be in connection with gambling; there were none in connection with the restaurant.

641 I would have no objection to appearing before the

Grand Jury; I have no objection to talking to anybody. You can reach me at Sheldrake 2777; it is not a listed telephone. If you telephone me to come before the Grand Jury, I will respond at the time you expect me in.

I have social security records for this year at my home.

642 PETER WADZINSKI, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Peter Wadzinski. They call me Watts for short. I live at 1523 West Fullerton Avenue. I was employed at the Harlem Stables. It was about September, 1934, when I started there. I was working for Glenn Glave and Russell Glave. My employment ceased there about February, 1935. I do not recall the exact month.

I have seen the defendant, William R. Johnson, once at the Harlem Stables, when I went there to collect my back wages. That was about July or August, 1936. My wife went with me. When I got there I seen Earl Jackson. The first time I went there was in the afternoon, and Earl Jackson told us to come back that evening. I saw Mr. Johnson in the evening. I went down to see about claiming my back wages. Russel Glave, Charlie Clark, Glenn Glave, Mr. Johnson, Sommers and a few other men were there. My wife was with me. I did, along later in the evening, have a conversation with the defendant Johnson. That was in the rear of the building. There is two rooms there, what they call the front end and the back room, the back end. It was in the back room. The back part of the premises was being used at that time. Outside of us there was a few people sitting around there. The Glave boys, Clark and some other people were there when Johnson and I had this conversation.

Mr. Callaghan: I object, if your Honor please, on behalf of all the other defendants.

The Court: Overruled.

The Witness: Mr. Johnson asked me how much I had coming. I told him it was about \$400.00. He says he
643 couldn't pay that much and asked what I would settle for. I thought for a minute. I told him about \$250.00. Mr. Johnson said he couldn't pay that much. He asked me if I would settle for \$100.00. My wife and I talked it over. I told him that I would accept \$100.00. I got the \$100.00. It was handed to my wife by Mr. Johnson. There was nothing else said by the defendant Johnson on that occasion. Sommers was there, but I didn't talk very much to Sommers

that evening. I would not be able to recognize him. I just got a glimpse of the man that evening. I do not know his first name.

Cross-Examination by Mr. Thompson.

I understood that this man that I was talking about last was named Sommers—I don't know exactly which it was—I probably would know him if I had a good look at the man. I had \$400.00 coming when I went out there. When I went out there to collect along about July or August, 1936, the money I had coming was money owing to me by these Glave brothers. I started to work with the Glave brothers in August or September, 1934 and I worked with them until February, 1935. The pay was supposed to be \$20.00 a week. I worked for them about four months in 1934 about a month in '35, about twenty weeks altogether. At \$20.00 a week that is \$400.00. I received one check during all that time for my work, for \$15.00. That employment ceased about February, 1935. I went to this place and asked them for my money along about July or August; I was notified by Mr. Russell Glave that they are paying what they owe, settling old accounts, to go down and see them. I could collect mine. He didn't mention just who was paying—he says to go down. I knew this man Jackson. Then I went down there. He used to work for Glaves when I was down there. He probably ran the place after I was gone. He worked for them while I did, as a bartender. He was not a manager that I knew of. A fellow there by the name of Fred, who managed the place when the Glave boys were away. He wasn't the boss, but he seemed to have charge when the Glave boys were not there. The Glave boys were there in the evening. They were not there in the daytime. When Fred wasn't there in the daytime Earl Jackson, the bartender, would be there. He was right there in the afternoon and evening.

Q. You were not there then after Jackson took the place over from the Glave boys.

A. No, sir. I was gone.

I spoke to the Glave boys during this year and three months, trying to collect my wages. I saw them occasionally. They didn't seem to have the money. I did not trust them any too hard about it. And I went out to the Harlem

Stables and found quite a number of men around the place out there, and Mr. Johnson worked out a settlement and gave me \$100.00. That is all I know about it. I hadn't done any work for Mr. Johnson. All I know is that I talked with him. He settled the matter—he gave me \$100.00. I didn't sign a release or anything.

IDA WATTS, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Ida Watts. I am the wife of Peter Watts, or Wadzinski. I live at 1523 Fullerton Avenue.

I have seen the defendant, William R. Johnson, once, in the Harlem Stables, 4301 Harlem Avenue. I was there and saw him in the summer of 1936. My husband was with me. When we got out at the ballroom at the Harlem Stables that evening I saw Earl Jackson, Russel Glave and Charley Kolarik, and Mr. Johnson and another man or two that I don't know who they were. They were in the Stables.

645 There was a conversation between Mr. Johnson and us. We had made previous trips out there to effect a settlement for our wages and we were told that if we would come that evening we could see Mr. Johnson and when we got out there and he asked if we had any wages coming and my husband told him that he had some wages coming for some work that he did for the Stables. And he said, "How much have you got coming," and my husband told him.

Mr. Callaghan: We object to this on behalf of all of the defendants on the ground it is not material, not binding on them.

The Court: Overruled.

The Witness: My husband told him that he had approximately \$400.00 coming, and Mr. Johnson said, "Well, what do you want for settlement" and he said "I think I should have \$250.00 at least." Mr. Johnson said, "You won't get anything like that." He said, "If you want to take \$100.00 and settle it we are willing to do that." So my husband and I stepped aside and we conferred a minute

or two and my husband walked back and told him that he would take the money. Then Mr. Johnson had the money in his hand and he started to hand it to my husband and my husband says, "Give it to my wife, she is the cashier." He gave me the \$100.

CHARLES KOLARIK, JR., called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Charles Kolarik, Jr. I live at 2434 South Harding Avenue. I am in the printing business now. I was employed at the Harlem Stables by Russell and 646 Glenn Glave. I worked there in the latter part of '34 to the latter part of '36. I was keeping their books. I was not there steadily—I came once a week about two hours in the evening.

I know the defendant, William R. Johnson. I first saw him at Walter Sass' home. That was in the latter part of 1936. I saw him after that at the Harlem Stables. That was shortly after the meeting we had at Walter Sass' home.

When I saw the defendant Johnson at the Harlem Stables there was present Jack Sommers, Russell Glave and Earl Jackson. That is all that I can recall now. I know Peter Watts. He was also there. He came in afterwards. I came in and I asked Mr. Johnson for the money that was due Watts and myself. At that time there was \$400.00 due me. Johnson said that he thought he paid off everything, and he wanted to get rid of the whole thing, and he had Jack Sommers come over and the cashier came over and gave me \$100.00. Prior to this there was a conversation in this respect in Walter Sass' home. The whole matter was supposed to be settled, and we settled on \$100.00, but I didn't get it at that time. I got it later, in the Harlem Stables. At the time I was at the Sass home I saw Russell and Glenn Glave, Elmer Johnson, William Johnson, Jack Sommers, Roman Clevis, and there were three or four other gentlemen that I didn't recognize there. I see the Jack Sommers I have been referring to in the courtroom (indicating the defendant Jack Sommers). I see the defendant Johnson here in the courtroom (indicating the defendant Johnson).

Prior to the time that Jack Sommers gave me the \$100.00 there had been no conversation in my presence concerning it. I did not hear any conversation between Sommers and Johnson. All he did was to call over Sommers, and told him to see that I got a hundred dollars, and he went over to the cashier, or the clerk, and the clerk came over with a hundred dollars.

647 *Cross-Examination by Mr. Thompson.*

I worked for the Glave Brothers between the latter part of '34 and the latter part of '36. I was out there about two hours once a week. I was keeping their records. I received an average of about fifteen a month. I worked twenty-four months. I had a balance of \$400.00 coming when I quit working for them. Twenty-four months at fifteen a month is \$360.00, but I did some extra work for them. They didn't pay me anything.

(Thereupon Mr. Hurley read to the Jury Exhibits R-52 to R-57, the returns of James A. Hartigan; R-44 to R-49, the returns of John M. Flanagan; R-35 to R-42, the returns of Jack Sommers; R. 24 and R-25, the returns of Reginald Mackay; R-15 to R-19, the returns of William P. Kelly; and R-58 to R-64, the returns of Andrew J. Creighton.)

648 IRWIN MARCUS, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Irwin Marcus. I operate a currency exchange. I live at 4804 North Kimball Avenue. I have been in business in that location since 1936. Prior to that time I was located at 3424 Lawrence Avenue from 1932 to 1936. I know the defendant Jack Sommers. I see him in the courtroom.

(Indicating the defendant Sommers.)

I first met him around June, 1936, at 3424 Lawrence Avenue at the place of business there. He came in with some checks. He wanted to make arrangements to cash them. I gave him a rate of 25 cents a hundred. He agreed to
649 stand behind all checks that came back.

Q. Was there anything else said at that time by Mr. Sommers or yourself?

Mr. Thompson: We object to any conversation outside of the presence of the other defendants, as far as they are concerned, as hearsay.

The Court: Overruled.

The Witness: He told me at that time that he wanted the large bills, one-hundred dollar bills, in exchange for the checks. I saw the defendant Sommers almost every day for about a month straight. Then he introduced me to a man named Maurice Downey. I had a conversation at that time with the defendant Sommers. This Downey was present.

Q. Tell us what was said or what was done at that time?

Mr. Thompson: We object as to all defendants except the defendant Sommers.

The Court: Overruled.

The Witness: Mr. Sommers told me that Mr. Downey would bring the checks in every day; that his initials would hold the same guarantee as Mr. Sommers. Thereafter, Mr. Downey continued to bring the checks in from July, 1936, until around July, 1938. Those checks that were brought in by either Mr. Downey or Mr. Sommers bore their initials. The marks on the checks were either J. S. or M. D. There were other marks placed on these checks. There were initials of K. L. and L. T. and D. D. In the course of this period, from June, 1936, to July, 1938, I paid the utility bills and wrote some money orders for the defendant Sommers. We would call the bank and verify if the check was Okay before depositing it. They also brought cash in once in a while. We would exchange them for one-hundred dollar bills or new fives or new tens. That happened on several occasions. I lost this business in July of 1938. I called Mr. Sommers and asked him why I lost it.

Mr. Thompson: Just a moment. We object to any conversation on this subject outside of the presence of the rest of the defendants. It is hearsay. Furthermore, it is altogether immaterial to any issue in this case.

The Court: Overruled.

I called Mr. Sommers and asked him why I lost this business and I believe he said that Mr. Brown was a tenant of their building and that he felt that he was entitled to the business. I know the defendant Stuart Solomon Brown. I see him in the courtroom.

Mr. Thompson: I move to strike that conversation, being hearsay as to the other defendants, immaterial.

The Court: Overruled.

Mr. Thompson: Carrying with it a legal conclusion.

The Court: Overruled.

Mr. Thompson: Relationship between Brown and somebody else, I don't know who.

The Court: Overruled.

The defendant Brown came into my place just before he opened up the exchange on Lawrence Avenue. That would be in 1938, and he told me he was going—

Mr. Thompson: We object to any conversation with the defendant Brown as hearsay as to all the rest of the defendants.

The Court: Overruled.

651 He told me he was going to open up an exchange around the corner, and I tried to convince him that there wasn't enough room for two and he told me he had some outside business, that he wasn't going to interfere with me. It was subsequent to that conversation that the defendant Sommers quit bringing checks into my place of business. I don't know what business Mr. Brown was in at the time I talked with him. All I know was that he was going to open up a currency exchange. He did open up a currency exchange located at 3424 Lawrence Avenue. The name of it was Lawrence Avenue Currency Exchange. It was a half a block from my place of business. The name of my currency exchange was the Albany Park Currency Exchange.

In cashing checks for Mr. Sommers, most of it was paid in hundred dollar bills and new five dollar bills or new ten dollar bills.

Q. And what percentage of the total handled for Mr. Sommers would be in hundred dollar bills, if you know?

Mr. Thompson: We object to any approximation by percentages. We haven't any aggregate yet. The percentage doesn't mean anything when we don't know what the aggregate is. And the aggregate is immaterial.

The Court: What is the purpose of the question?

Mr. Miller: To show by this witness that most of these checks that were cashed were cashed in exchange for hundred dollar bills. There is already evidence in the record showing the use of hundred dollar bills in this case.

The Court: Let him answer.

The Witness: I don't know just exactly what the amounts would be. Sometimes they would come in and get \$3,000.00 in hundred dollar bills, sometimes less. Most all of the checks cashed by me for the defendant Sommers would be paid in hundred dollar bills. After I received the money for the checks brought in by Mr. Sommers, I would divide it into envelopes and give them to Mr. Downey.

Q. And what would you put on the envelopes, write anything on the envelopes?

A. Yes.

Mr. Thompson: We object to that as hearsay; we are not bound by what this witness put on any documents.

The Court: He may answer.

The Witness: K. L., D. D., and L. T. I delivered these envelopes to Mr. Downey.

Q. What did K. L. mean on that envelope?

Mr. Thompson: We object. There again he is asking for the same thing Your Honor sustained the objection to twice. Each time it has been developed that Mr. Downey told him all he knows about it.

Mr. Hurley: I think the first question that was asked was objectionable, because it called for a conversation of Downey, but here I contend that Downey is the agent of Sommers. He might not be able to detail the conversation with that man but at the same time he can tell what he did as the result of that conversation and what he worked under. The marking K. L. had a meaning, a significance, and we have a right to bring it out without the conversation.

The Court: I think both of your former questions were objectionable. Read this question.

(Question read as above recorded.)

The Court: What did it mean to you?

The Witness: Kedzie and Lawrence.

653 The Court: I think I will let that stand.

The Witness: The Horse Shoe was at Kedzie and Lawrence. That was a gambling place. The symbol D. D. put on one of those envelopes by me meant Division and Dearborn. That was also a gambling place. The letters L. T. put on an envelope by me means Lincoln Tavern.

Mr. Thompson: Object to all these questions as hearsay, Your Honor; already has been so developed.

The Court: Overruled.

The Witness: Lincoln Tavern was also a gambling es-

tablishment. Government's Exhibit X-139 for identification are the sheets we enter the checks on. They are kept under my supervision and control, and they are part of the permanent records of my business. The date was placed in column 1. The next column contained the bank number, and the next the maker of the check. And next column, the endorser, and the next column, the second endorser, and in the next to the last column the amount, and in the last column the fee. These records were kept by me in the usual and ordinary course of the business. It is customary in my business to keep such records.

The period of time covered by Government's Exhibit X-139 for identification is from June 1, 1936, until June 30, 1936. Government's Exhibit X-139 contains a complete record of all the checks cashed by me during that period of time.

I have seen Government's Exhibit X-140 for identification, consisting of a number of sheets, before. Those are my records. They are records of check entries from July 1936 until July 31, 1936. They are similar to the records

I have just described as Government's Exhibit X-139.
654 These records contain a record of all the checks cashed by the defendant Sommers in my place.

Government's Exhibit X-141 for identification consisting of 45 sheets are check records as of August 1, 1936, until September 1, 1936.

Government's Exhibit X-142 for identification, consisting of a group of 47 sheets, contains a record of checks cashed during the period of September 1, 1936, until September 30, 1936, by the defendant Sommers. These are checks entered for that period.

Government's Exhibit X-143 for identification, consisting of 56 sheets, are checks from October 1, 1936, until October 31, 1936. The initials "M.D." on Government's Exhibit X-143 for identification, bearing the date of Friday, October 16, 1936, about five or six lines down, the third to the last column, mean Maurice Downey. That is the same Downey that was introduced to me by the defendant Sommers, and who brought in checks to me for the defendant Sommers.

Government's Exhibit X-144 for identification, consisting of a group of 51 sheets, are checks from Novem-
655 ber 2, 1936, until November 30, 1936. records of my company. Government's Exhibit 144 contains a rec-

ord of the checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-145 for identification, consisting of a group of 67 sheets, are checks entered December 1, 1936, to December 31, 1936, and are part of the permanent records of my company. Government's Exhibit X-145 for identification contains a record of the checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit 146 for identification, consisting of 60 sheets, are checks from January 2, 1937, until February 1, 1937. Government's Exhibit X-146 contains a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-147 for identification, consisting of a group of 59 sheets, are checks from February 1, 1937, until March 1, 1937. Government's Exhibit X-147 for identification contains a record of the checks cashed by me on behalf of the defendant Sommers. These exhibits that

I have been referring to do not contain a record of all 656 the checks cashed by me on behalf of the defendant

Sommers. The checks that we didn't have time to enter down on there are left out and they would reflect in our deposit slip. We did not make any record of the checks that are not on these records. They are on the deposit slips. That is the only record I have of checks that are not on these records.

Government's Exhibit X-148 for identification, consisting of 58 sheets, are checks from March 1, 1937, until April 1, 1937. Government's Exhibit X-148 for identification includes all of the checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-149 for identification, consisting of 64 sheets, are checks from April 1, 1937, until March 1, 1937. Government's Exhibit X-149 for identification includes checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-150 for identification, consisting of a group of 64 sheets, are checks from May 1, 1937, until June 1, 1937. Government's Exhibit X-150 for identification includes a record of checks cashed by me on behalf of the defendant Sommers.

657 Government's Exhibit X-151, for identification, consisting of a group of 66 sheets, are checks from June 1, 1937, until June 30, 1937. Government's Exhibit X-151,

for identification, includes a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-152, for identification, consisting of a group of 72 sheets, are checks from July 1, 1937, to August 2, 1937. Government's Exhibit X-152, for identification, includes a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-153, for identification, consisting of a group of 64 sheets are checks from August 2, 1937, to August 31, 1937. Government's Exhibit X-153, for identification, contains a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-154, for identification, consisting of a group of 57 sheets, are checks from September 1, 1937, until October 1, 1937. Government's Exhibit 658 X-154 for identification includes a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-155, for identification, consisting of a group of 61 sheets, are checks from October 1, 1937, until November 1, 1937. Government's Exhibit X-155, for identification, includes a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-156, for identification, consisting of a group of 52 sheets, are checks from November 1, 1937, until November 30, 1937. Government's Exhibit X-156, for identification, includes a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-157, for identification, consisting of a group of 56 sheets, are checks from December 1, 1937, until December 31, 1937, kept by me in the usual and ordinary course of my business. Government's Exhibit X-157, for identification, includes checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-158, for identification, consisting of a group of 44 sheets, are checks from January 659 3, 1938, until February 1, 1938. Government's Exhibit X-158, for identification, includes a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-159, for identification, are a group consisting of 44 sheets and are checks from February 1, 1938, until February 28, 1938. Government's Exhibit X-159, for identification, reflects a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-160, for identification, consist-

ing of a group of 60 sheets, are checks cashed from March 1, 1938, until April 1, 1938. Government's Exhibit X-160, for identification, contains a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-161, for identification, consisting of a group of 58 sheets, are checks from April 1, 1938, until April 30, 1938. Government's Exhibit X-161, for identification, contains a record of the checks cashed by me on behalf of the defendant Sommers.

660 Government's Exhibit X-162, for identification, consisting of a group of 40 sheets, are checks cashed from May 2, 1938, to June 1, 1938. Government's Exhibit X-162, for identification, contains a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-163, for identification, consisting of a group of 55 sheets, are checks from June 13, 1938, until July 1, 1938, kept by me in the usual and ordinary course of my business. Government's Exhibit X-163, for identification, contain a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-165, for identification, consisting of a group of 53 sheets, are checks from July 1, 1938, until August 1, 1938. Government's Exhibit X-164, for identification, contains a record of checks cashed by me for the defendant Sommers.

Government's Exhibit X-165, for identification, consisting of a group of 46 sheets, are checks from August 1, 661 1938, until September 1, 1938. Government's Exhibit X-165, for identification, reflects a record of checks cashed by me on behalf of the defendant Sommers.

Government's Exhibit X-166, for identification, consisting of a group of 44 sheets, are checks from September 1, 1938, until October 1, 1938. Government's Exhibit X-166, for identification, contains a record of checks cashed by me for the defendant Sommers.

Government's Exhibit X-167, for identification, are checks from October 1, 1938, until November 1, 1938. Government's Exhibit X-157, for identification, contains a record of checks cashed on behalf of defendant Sommers.

All of these sheets are a part of the permanent records of my Company, are kept by the Company in the usual and ordinary course of business under my supervision and control and it is usual and customary in our business to keep such records.

Q. You stated, Mr. Marcus, that these exhibits you have just identified, contain a record of checks cashed on behalf of the defendant Sommers. Now, can you tell how the checks cashed on behalf of defendant Sommers are designated in those records?

Mr. Thompson: We object to this as hearsay as to all of the other defendants. It is in no way material to the issue in this case,—the amount of taxable income of the defendant Johnson.

The Court: Overruled.

The Witness: By the initials J. S. and M. D. Those are the only two initials there.

662 Q. I show you Government's Exhibits X-64, X-137, and X-138, in evidence, and call your attention to the reverse side of the checks and ask you to state if you recognize your bank stamp on that check?

A. Yes, sir.

I recognize M. D. on the back of that. That signifies Maurice Downey. That is one of the checks brought to my place by Maurice Downey on behalf of the defendant Sommers.

Mr. Thompson: We object to this on behalf of defendant Sommers. It is an assumption, without any proof.

The Court: Overruled.

I recognize my bank stamp on Government's Exhibits X-64, and X-167, and the initials "M. D."

Q. Mr. Marcus, on checks brought in on behalf of defendant Sommers, is there any other designation in your records, other than J. S. or M. D.?

A. K. L. and D. D.

Mr. Thompson: We object to this as hearsay.

The Court: Overruled.

Q. Are there any other checks or symbols in your records by which you identify such checks?

A. That number 1, 2 and 3.

Q. What does number 1 mean on your records in regard to those checks?

Mr. Thompson: We object to that. There is no proof that he knows anything about those symbols.

663 The Court: Overruled.

Mr. Thompson: He is not the agent of these defendants.

The Court: Overruled.

Mr. Thompson: And certainly not of the defendant Johnson, your Honor.

The Court: Overruled.

The Witness: Kedzie and Lawrence.

Q. What does that number 2 on your records indicate with regard to those checks?

664 Mr. Thompson: We object to that.

The Court: Overruled.

The Witness: Harlem Stables.

Mr. Miller: What does that number 3 mean?

Mr. Thompson: Same objection.

The Court: Overruled.

The Witness: A. Division and Dearborn.

These designations are made in the last column of my records, the third column on the right. That is true of every sheet in these exhibits to which I have testified. That is true of all numbers, initials, and symbols to which I have testified.

Mr. Thompson: We move to strike the answers with respect to these exhibits, what they show; hearsay.

The Court: Overruled.

Mr. Thompson: Particularly on behalf of the defendant Johnson.

The Court: Overruled.

The Witness: Other than the symbols, initials, and numbers I have testified to, I don't remember using any other. I don't remember these letters "H. S."

Government's Exhibit X-191, for identification, consisting of a bundle of sheets, are deposit slips reflecting deposits made in the Milwaukee and Ashland Avenue Bank.

Q. Referring you specifically to deposit slip of July 24th, 1936, part of Government's Exhibit X-191 for identification, which shows a deposit of currency, \$5,000.00, state if you know where that currency came from?

Mr. Thompson: We object to this testimony as hearsay as to all of the defendants.

665 The Court: Overruled.

The Witness: That \$5,000 was brought in by either Downey or Sommers.

Mr. Thompson: We object and move to strike the answer on the ground it is not connected with any defendant.

The Court: Motion denied.

Mr. Miller: Q. Will you examine these tickets, comprising Government's Exhibit X-191, and state if you know where every deposit of currency came from and give the dates of the deposits?

A. July 24th, \$5,000.00, that was brought in by either Mr. Downey or Mr. Sommers. August 31, 1936, \$1700.00. That is all.

Q. What about it?

A. It was brought in by either Mr. Downey or Mr. Sommers.

Q. Go through all the tickets, Mr. Marcus, please, and tell us where the currency came from, if you know?

Mr. Thompson: We object to any such testimony as having no tendency to prove the taxable income of the defendant William R. Johnson and hearsay as to the defendant Johnson and as to all the other defendants, except Sommers, and hearsay as to Sommers, when he does not know whether it is Sommers or Downey.

The Court: Overruled.

The Witness: February 26, 1937, \$1,000.00; March 2nd, 1937, \$2,000.00; March 5th, 1937, \$2,000.00; March 13th, 1937, \$1,000.00; March 26th, 1937, \$2,000.00; April 5th, 1937, \$1,570; April 6th, 1937, \$775.00; April 15th, 1937, \$1,500.00; April 17th, 1937, \$1,000.00; April 28th, 1937, \$1,000.00;

April 29th, 1937, \$450.00; May 1st, 1937, \$4,512.50; May 6th, 1937, \$1,600.00; May 8th, 1937, \$800.00; May 18th, 1937, \$5,000.00; May 19th, 1937, \$2,500.00; May 20th, \$2,000.00; May 22nd, \$1,000.00; May 24th, \$1,400.00; May 25th, \$4,700.00; May 27th, \$3,800.00; June 1st, \$3,000.00; June 9th, \$31,000.00; June 19th, \$5,000.00; June 23rd, \$4,120.00; June 24th, \$3,500.00; June 25th, \$4,700.00; June 26th, \$800.00; June 29th, \$2,500.00; July 10th, \$1,675.00; July 21st, \$430.00; August 5th, \$500.00; August 10th, \$4,000.00; August 17th, \$650.00; August 23rd, \$3,500.00; August 25th, \$4,000.00; August 26, \$2,500.00; August 28th, \$1,500.00; September 3rd, \$1,215.00; September 4th, \$2,200.00; September 8th, \$1,200.00; September 11th, \$1,200.00; February 21st, \$2,000.00; February 25th, \$500.00; March 3rd, \$1,000.00;—

Q. What year are you in now, Mr. Marcus? You had better state the year.

A. March 21st, 1938, \$1,000.00; March 31st, 1938, \$1,000.00; April 19th, 1938, \$3,000.00; April 20th, 1938, \$3,050.00; April 23rd, \$1,000.00; April 26th, \$2,000.00; April 27th, \$1,500.00; April 28th, \$2,000.00.

Q. Is that all in the year 1938?

A. Yes, sir.

May 9th, 1938, \$5,000.00; May 10th, \$5,500.00; May 11th, \$1,500.00; May 12th, \$2,000.00; May 14th, \$3,700.00; May

16th, \$2,500.00; May 17th, \$1,601.00; May 18th, \$2,000.00; May 19th, \$600.00; May 20th, \$1,100.00; May 21, \$1,050.00; May 23rd, \$5,000.00; May 24th, \$4,500.00; May 25th, \$6,500.00; May 26th, \$1,000.00; May 27th, \$3,700.00; May 31st, \$10,400.00; June 3rd, \$400.00; June 6th, \$2,500.00; June 7th, \$10,001.00; June 8th, \$2,001.00; June 10th, \$1,000.00; June 13th, \$5,020.00; June 14th, \$5,000.00; June 16th, \$1,500.00; June 17th, \$2,000.00; June 20th, \$10,000.00; June 21st, 667 \$2,000.00; June 22nd, \$150.00; June 25th, \$150.00; June 24th, \$116.00; June 27th, \$13,000.00; July 1st, \$250.00; July 5th, \$650.00; July 6th, \$4,000.00; July 19th, \$8,100.00; July 13th, \$4,652.00; July 15th, \$500.00; July 16th, \$4,000.00.

Q. You stated, Mr. Marcus, that you had performed various services for the defendant Sommers. Did you state all of the things you did for him during that period?

Mr. Thompson: I object to that as immaterial to the rest of the defendants, and not tending to prove any issue in this case.

The Court: Overruled.

The Witness: I have not had any conversations with Mr. Sommers other than we have related with regard to cashing of these checks.

I do recall making up a card index system for Mr. Sommers. I called him and told him that he could be stuck with quite a bit of money there if he did not keep tab from one place to another. A man may come into one place and cash a check and then may go to another place. And I offered to make up a card index for him. He told me to go ahead but he never called for it. I made up an index with just the man's name and what bank the check was drawn on. This index was never used. I would get the names to put in this card index from the entry sheet there, the checks that had already been cashed for the defendant.

There are items on Government's Exhibit X-149, being a sheet dated April 1, 1937, that I can identify as coming from the defendant Sommers. They bear the symbols

"H. S. M. D.; then K. L. M. D."

668 Q. Can you now state what H. S. means?

A. I presume it is Harlem Stables.

Mr. Thompson: We object to that and move to strike it as a presumption, and also as hearsay as to all these defendants.

Examination by the Court.

H. S. stood for Harlem Stables. I did not put the letters on there. The teller did that under my direction. He put it down there to indicate Harlem Stables. It is just the initials of Harlem Stables. It was on the back of the check. H. S. is on the back of the check. He put the same entry on the sheet. That was on the back of the check.

The Court: I think I will let it stand.

Mr. Miller continues his examination.

Referring again to sheet dated April 1st, 1937, out of Government's Exhibit 149 for identification, those letters H. S. M. D. indicate that check was brought in by Mr. Downey. That is the same Mr. Downey that was introduced to me by Mr. Sommers. That is true of the places where the symbols H. S. M. D. would appear in my records. The tape attached to that ticket dated July 24th, 1936, in Government's Exhibit X-191 for identification is part of the original ticket deposited by me in the bank. The tape was made up in our office. A copy went to the bank and we kept the other copy. I recognize it as such.

Cross-Examination by Mr. Thompson.

I have operated this currency exchange eight years. It is an individual. There were two employees in this period of time we are talking about, in June, 1936, two in July, 1936. I mean one and myself. We moved around the corner to 4804 North Kimball Avenue. I had two there. I always had just myself and one person. I employed the same person at all times. The handwriting on the front page of Government's Exhibit X-137 is that of a fellow by the name of Blumenthal. He was my clerk. The writing of June 6th and the check "Paddor Brothers" was by a girl by the name of Rose Parrish. She filled in for me. She took my place that day. She is the one that put the initials "J. S." over here in the column third from the right. This appearing on the line of June 5 is F. Growka, who had a McCarthy Foundry Company check for \$26.60 and he cashed it with Mr. J. Horah and Mr. Sommers in turn cashed it for Mr. Horah. I do not know anything about that check. I think this girl worked for me up until June 15th.

The writing in green ink along about the middle of June is that of my daughter. There were four that worked on this exchange various times, but there were never more than two. I never entered any checks. I do not know anything about my daughter having entered checks, put down "J. S." and then scratched it out. That occurred on several places. I do not know Edelbert Rice, C. Garricks, Nick Karkazis, Ben Alson, or W. S. Bieck. We cashed checks for anybody that came in there with a check. They identify themselves. I believe we have a card on file for Sam Sweitzer. I don't think I know Dick Harris or John Brady. J. S. is written after the names you have read and then scratched out. That is all in my daughter's handwriting. She is going to be 18 next month. Just helped out after school. She was 14 in 1936. She was in first year high school, when doing this work.

I don't remember Henry B. Young. I do not know Mr. Bowen that also cashed a U. S. Treasury check, or Robert Lamar. My regular fee for cashing checks was \$.35 a hundred. The employees of the City of Chicago that 670 cashed checks there got a special rate, all from the Albany Park police station. Those are policemen. My regular charge to the casual patron was thirty-five cents a hundred, but ten cents was the minimum charge.

Referring to Government's Exhibit X-145 for identification, under the date of December 1, line 2, December 1st is the date of the check, and the next would be the bank number. 2-11, that is the City National Bank of Chicago. The next is H. B. Gregory. That is the maker of the check. The next, the payee, M. D., the endorser. This particular check was made out to cash. I know because we haven't any endorser on here. We cash checks payable to "cash" and payable to "Currency." I wouldn't cash a check payable to M. D. I wouldn't see that check when it came in. I know the way we cash our checks. All of the tellers do the same thing. "M. D." indicates to me that the endorser on the check is "M. D." and the next line indicates that the second endorser on the check was "M. D." He wrote "M. D." on it twice. He wrote it down below, too. Down below is "L. T." "M. D." I don't remember whether I saw that particular check, but from the indication on that check register, it would show that "M. D." was on top, then underneath would be "L. T." and "M. D." The writing on the sheet looks like Mr. Blumenthal's. He doesn't work for me now. A fellow by the name of Naiditch

is working in his place. It is two years since Mr. Blumenthal worked for me. I don't know where he is. I think he and his wife have a liquor store on Lawrence Avenue. That is a \$25.00 check we have been talking about.

671 I don't think there were any transactions with Mr. Sommers during the month of December, 1938. Mr. Sommers was not doing business with me in October, 1938. I did not take a look at X-167, to see whether any transactions are on there with Mr. Sommers in October, 1938. I didn't go through the whole record. I didn't find any transactions with Mr. Sommers for the month of October, 1938, in Exhibit X-167. Those forty-seven sheets marked X-167 do not relate to any dealings with Mr. Sommers at all. I did not have any with Mr. Maurice Downey in this month of October, 1938. None of these transactions, about which I was being examined, occurred during this month of October, 1938.

Q. And you were in error when you answered the United States Attorney that this exhibit showed any transactions with Mr. Sommers?

A. Well, I didn't go through the records; though I thought they went through the records, so that I just took that—I took it for granted it would be in there if we had any transactions.

The Witness: I don't think we did have any transactions with Mr. Sommers in September, 1938, Exhibit X-166.

Q. And so the reason that you answered "Yes" to the question that that exhibit showed transactions with Mr. Sommers, was because you had gotten in the habit of saying "Yes"?

A. I thought that everything was in that record.

Q. You just assumed that because Government's counsel asked if the record showed that, it showed it because he had it in his hand: is that right?

The Witness: No audible answer.

I don't remember whether or not Exhibit X-165, 672 which is August, 1938, has any record of transactions with Mr. Sommers. If it is in the record we had transactions. I can't tell whether we did or whether we didn't. I had no transactions with Mr. Sommers unless it appears in this third column from the left—the initials "J. S." or the initials "M. D.", and if the initials "M. D." appear there that means that it was brought in by Maurice Downey. Maurice Downey is the man introduced to me by Mr. Sommers. That was after Mr. Sommers had done business with

me for about a month. He commenced doing business with me in June, 1936, and would come over with checks and cash those checks. He told me he was going to have checks almost every day and would like to have a special rate, and I charged him 25c a hundred for cashing checks for him. I didn't charge him anything for the service rendered in respect to cash. That consisted of taking old bills down to the bank and exchanging them for new fives, tens, twenties and hundreds. Mr. Sommers would come in with old bills of all denominations, soft bills which had been used, and he would ask me to send them down by Brinks Express to the bank and exchange them there for new five, ten, twenty dollar bills, and so on.

I don't remember what he told me, but I know, that some of the bills had dates on them. That is all I know. I never questioned him.

Q. Did he explain to you that those dates stamped on the bills indicated bills used by shills in his place, or did he tell you anything about it?

A. I think he did say something, that they used that money, but what it was for, I don't recollect.

I didn't have much to do with gambling houses. All of this cash that I handled was merely in exchange of bills. I don't know whether or not the same money ways turned over and over again every week. I didn't keep the 673 numbers of the bills. These amounts came in various amounts. Sometimes he would bring in a thousand in cash to be exchanged.

The \$5,000 appearing on the X-191, bearing date of July 24, 1936, a deposit slip on the Milwaukee Avenue National Bank of Chicago, for the account of Albany Park Deposit and Exchange, was cash brought into my place by Mr. Sommers or Mr. Downey. These two men were the only ones that brought cash in there. If the money was brought in by either Mr. Sommers or Mr. Downey it was brought in only for the purpose of exchanging bills for bills. This whole slip of paper, which is an adding machine tape with a lot of figures on it, totaling \$9,933.61, was the total of my transactions with the Milwaukee National Bank on this particular occasion, checks and cash and everything.

Q. Now then, on August 31st, which is seven days later, there seems to be \$1700.00 of currency. Is it likewise your recollection that that was money brought in by one of—was money to be exchanged for new money?

A. Well, I assume most of it was. We very seldom sent

cash down to the bank, just on very rare occasions. When we would order too much money, we would take whatever surplus we have and send that back to the bank, which is very seldom.

I had a lot of money out there at my exchange to cash those checks when they came in. I had to have on hand three or four or five thousand dollars. That was brought to me by the armoured express. I had to have about \$5,000 a day for my regular business. I would often have an overplus of money, so that I would want to send it back to the bank at the close of the day's business. If I had an overplus of money it would appear on these as currency taken back in deposits. I could not tell the difference between my currency I was sending back and Mr. Sommers's currency

I was sending to the bank to be changed, as far as 674 these slips are concerned. The \$3,000 of the \$5,000 might have been his and \$2,000 mine but, as I say, we very seldom sent money down to the bank, but sometimes we did. This might have been one of the times. I wouldn't say that every time currency appears on one of these deposit slips that it was Mr. Sommers or Mr. Downey's currency. If Mr. Downey or Mr. Sommers or some one else brought in the \$1,000 shown on February 26, 1937, that was just exchange, and so with all of this money.

I didn't add up the amount of checks that appeared on the June 1936 sheets, which is Government's Exhibit X-139. I don't know the total of the June, 1936 business that Mr. Sommers did in my exchange. I didn't add up the total of any of those months that the Government asked me about.

I think I did say something to Mr. Sommers about his recommending my exchange to some of his friends who would also have similar business. I told him that if he knew of any other people who handled any other gambling places I would give him the same rates. That was ten cents less than the regular rate. If I remember correctly, I think he told me that he would speak to a few of his friends. I was aware that I was serving a gambling house when I cashed checks for Mr. Sommers' business up at Kedzie and Lawrence. I have never been up there. All I know about the place is what Mr. Sommers or some one else told me. That was common knowledge around the street that the Horse Shoe was a gambling establishment — hearsay. I have never been in the place. I never asked Mr. Sommers where those checks came from. I don't know

whether the checks came from his gambling casino or whether they were checks that were cashed in his restaurant down below, or whether they were checks cashed by him in accommodation for the grocer, butcher and candle stick maker up and down the street there. I don't know
675 anything about that. All I was interested in was that

Mr. Sommers would guarantee that the checks would be paid which were presented for payment, and he made good any checks that bounced back.

After he had been doing business with me a month he brought in Mr. Downey and introduced him. He did not tell me that Mr. Downey was working for James Hartigan at the time. I don't know Mr. Hartigan. If Mr. Hartigan had come in there for checks to be cashed I would have required some introduction or identification. I didn't know Mr. Downey prior to Mr. Sommers introducing him. I don't remember whether Mr. Sommers told me he was an employee of Mr. Hartigan's or not. Mr. Sommers did not tell me that Mr. Hartigan was the operator of the Lincoln Tavern. He did not tell me who was running it.

Q. Now, you say that you understood that L. T. written on the back of a check meant that it came from the Lincoln Tavern. Where did you get that understanding?

A. Well, I just—the initial of the Lincoln Tavern, the initials are L. T.

I have never been out to the Lincoln Tavern. It was common knowledge that it was a gambling house. Everybody seems to have known that. I mean that some people knew that Lincoln Tavern was a gambling house. I don't know if the police and all knew it. When these checks came in with L. T. on it they were always brought in by Mr. Downey. Mr. Sommers did not bring in any checks marked L. T. on the back. I understood the checks marked D. D. to be Division and Dearborn. I did not know what was up there. I have never been in that building at Division and Dearborn. I just assumed that that was a gambling house up there. On the back of the check would be D. D., and then dash, and then the initials M. D. I knew that the M. D. was for Maurice Downey. That identified for me the man who brought the check in and cashed it.

676 Q. And how did you find out that D. D. meant Division and Dearborn?

A. I don't know whether Mr. Downey—or Mr. Downey may have said so. I don't recollect that, but—

I just took it the initials meant Division and Dearborn.

Whether that was a club or not I didn't know, whether it was Division and Dearborn Club or not. I don't think the Government Attorneys pointed out to me that D. & D. stood for Division and Dearborn, but they asked me what D. & D. meant. I believe I told them Division and Dearborn. They talked to me a few times about this case. They have had these sheets of mine since March or April. I don't believe I went through the records with them, not before the Grand Jury.

Mr. Sommers came in once in a while with checks after Mr. Downey started bringing them in. Mr. Downey usually came around with the checks a little after twelve, noon. I had an understanding that they were to be there at that time. I would not get the money at the bank and deliver it the next morning. We had an afternoon shipment. That is why we asked them to bring the checks in around noon time. That would give us about an hour and fifteen minutes in which to get the checks and make the deposit. Then the armored car would make a delivery with the cash so that we could get it into the clearing house that night. That was the understanding with Mr. Sommers, so that they could be promptly put through the bank and get them cashed promptly. I believe I suggested to him that he would make it a little faster there if he brought them in at noon time and I could get them out—it would go out the same day. I gave him the cash the same afternoon. The truck would go down with the checks and come back with the cash on a round trip. Mr. Downey brought in checks, as I remember it now, with those three sets of initials, L. T., H. S. and D. D., plus his initials, M. D. He

did not tell me that he was bringing in the checks 677 that had "H. S." on it for Mr. Hartigan for Harlem Stables. I think he mentioned Mr. Kelly's name when he was bringing the checks down from Division and Dearborn.

Q. He mentioned Mr. Kelly. Did he tell you that, that is, did Mr. Downey tell you that he, Mr. Downey, had a brother that worked up at Mr. Kelly's place, and brought the checks down to him and that he in turn brought them down to the exchange?

A. Yes. He had a brother. I don't know where he worked, but I know he had a brother.

He spoke to me about his brother working at one of these gambling houses. I believe I saw Mr. Kelly once. That is the Mr. Kelly here in the courtroom. I saw his

picture in the paper, so I could pick him out. I think he came in once to get change for a bill.

I never saw Mr. Creighton, so far as I know. I never saw Mr. Wait so far as I know. I never saw Mr. Mackay. I never saw Mr. Hartigan. I don't know Mr. Flanagan. I don't know Mr. Bill Johnson either. I never have been in any of these gambling houses.

All I know is that the Harlem Stables is just a name. I didn't even know where it is. I don't know where the Lincoln Tavern is. I never heard of the Southland Club or the Northland Club, the Select Club, the Harlem Club, 460, or the 4020, the Club Western, the Mayfair Club—I don't know what those are. I never heard of their general reputation as gambling houses. I don't know anything about the Villa Moderne. I had been at the Bon Air. I don't know whether it was a gambling house or not. We just went there for the evening and had dinner and enjoyed the floor show. It was a countryside club inn, a rather expensive one. It was a high class show. My wife was with me and my brother-in-law and his wife. I don't remember—we went out there about two years ago. I have more than one currency exchange. I have six—they 678 are all around the Northwest side. That was not true of 1936. I had two in June, 1936. I opened the others in 1937. I had six for the past year. I believe I had five at the time Mr. Sommers ceased to do business with me, some time in 1938.

I circulated from one exchange to the other of these five exchanges. I would not spend very much time at each one of them each day. The hours of my exchanges are from nine A. M. to 6 P. M., continuously open during the noon hour. I would not spend over a couple of hours or an hour and a half at most at each one. I had from one to two employees in each one of these exchanges. I did rotate them around occasionally. Just four of my employees served the Albany Park Exchange during the period of two years we have been talking about, with these exhibits. I have named the four besides myself. I don't believe I made any entries on the book.

Mr. Sommers did not want his checks cashed in hundred dollar bills every time he came in. He would get all this new money in smaller bills, ones, fives, tens and twenties. He called it working money.

When Mr. Downey came in he would bring in these checks in an envelope and if he brought in a batch of

checks he would bring them in in an envelope, and on the outside he would have marked "L. T.". I just assumed that was the Lincoln Tavern because I heard of that as a gambling house. He would have marked on the outside of another envelope, "D. D." I assumed that was Division and Dearborn.

I knew Jack Sommers a long time before I began doing banking business with him. I did not know him personally, I heard of him I would say about twenty years. I knew him by general reputation in the neighborhood. I knew that he operated this gambling house over on Kedzie. I knew he ran a restaurant there prior to that. I don't remember that he used to run the Anchor Sand-679 wich Shop—I don't know the name of it. I know him in the neighborhood, as a man of some substance. Occasionally Mr. Sommers would O. K. a check and the party would come in and I would cash it on his recommendation and then when that happened I would enter on a little sheet here, "J. S.", to show who O. K.'d the check, so that these two sheets of checks were people that Mr. Sommers accommodated by initialing the check, and I would cash it. He would call me up and tell me he was sending over someone to cash a check. There is only one entry on this whole batch of papers, marked X-165, which was August, 1938, which contains the initials over here in this column, "J. S." That is the check issued by the Keystone Motors. It is issued to Mr. M. Gershman. I didn't know him. That is for \$20.00. That is probably one of those checks that Mr. Sommers initialed and sent over to accommodate this man.

This is no batch of gambling checks, not where they just come one at a time. I know the Keystone Motor is a concern there at Kedzie and Lawrence, one of Mr. Sommers' neighbors. I don't know that Mr. Gershman is the barber there in the same neighborhood.

Redirect Examination by Mr. Miller.

I testified that Mr. Sommers would sometimes O. K. a check for some third person that came in and cashed it at my exchange. That happened several times—I don't know how often—on an average of maybe once a week or twice a week. He would send a man in there occasionally with his signature on there. I don't remember how often that happened. I couldn't tell, off-hand, how many times from

June, '36 until July of 1938. I would record such a transaction on these sheets. If a man came in in the morning it would appear as an individual item, or if it happened to come in at the same time as Mr. Downey came in 680 it would appear all together. I don't recollect whether anyone came in at the same time that Mr. Downey did or not. Most of the checks that I cashed for Mr. Sommers were brought in either by Mr. Sommers or Mr. Downey. They bore the symbol, "D. D.", "L. T.", K. L., and so forth. I always recorded those checks on these sheets—not all of them, as I said before if he came in late we didn't get a chance to enter the checks but it would appear on the deposit slip. In that event I would enter them on the deposit slip attached to our original deposit slip. No one else's checks were ever included, only on the deposit slip.

Mr. Downey did bring in checks marked "K. L." Once in a while Mr. Sommers would come in with checks after Mr. Downey, on the same day. If Mr. Sommers came in after Mr. Downey it would just be maybe to pay a light bill or get a money order or something like that. It would not be for the purpose of bringing in checks to be cashed.

Mr. Sommers made the reservations for me to go out to the Bon Air.

Checks brought in by either Sommers or Mr. Downey were returned unpaid by the bank. Mr. Sommers paid them if it was on K. L. He would bring the money in, and if it was on the other clubs, why, we would deduct it from the checks that they would bring in that afternoon. I did not follow the practice of deducting it from the checks marked "K. L." because I had Mr. Sommers' telephone number—that is all.

I did talk to Mr. Sommers over the 'phone about checks returned, marked "D. D.", "L. T.", or "H. S.". I think occasionally he would say he would contact, and let them know about it.

Q. Let who know about it?

A. Well,—whoever—Division and Dearborn—he said he would call them and tell Mr. Kelly about it.

681 Then when Mr. Downey came in I would deduct the amount of the checks.

I talked to defendant Jack Sommers about the checks that were returned and marked "L. T." He said he would make a call for me and see that it is taken care of. Then when they came in there either with the cash or I would

deduct it from the checks. Downey came in most of the time. Mr. Sommers did not bring any cash in on those occasions.

If any checks marked "H. S." were returned we followed the same procedure. I would call up the defendant, Jack Sommers, at the Horse Shoe Restaurant, about them. That is the only place I would ever call him. I felt that as long as Sommers recommended them to me that he practically guaranteed them, and that is why I would call him. He as much as said that he would guarantee every one of them.

I can not identify on these deposits of currency to my bank account which items would be classified as surplus of my currency deposit. We had a surplus of our own currency whenever we ordered enough for a pay day and the pay day eventually was postponed. That surplus would be \$1,500 or \$2,000. That happened because the police did not get their pay regularly at that time, and we did not know when to expect their pay days. The police were paid twice a month.

We handled the Chicago Rapid Transit payroll and they were paid twice a month. On those occasions we might have a surplus of cash. The policemen and the Chicago Rapid Transit employees were not paid on the same day. We did not handle any other payrolls. The Chicago Rapid Transit employees were paid on the 7th and 22nd. The policemen were paid on the 1st and the 16th. We would deposit in the afternoon of the same day cash representing a surplus. I can't tell you how many times a

surplus of our own currency or deposit was re-deposited in our bank account during the period from 1936 to June, 1938. I imagine about maybe three times a month or something like that. That would be the most it would happen. I did order currency from the Milwaukee Avenue National Bank every day. I didn't get currency during this period from any other bank. We would call the night before for the morning shipment and around 12:15 for the afternoon shipment.

In ordering the currency we would tell the bank the denominations of the bills that we wanted. From June, 1936 to July, 1938, we ordered \$100.00 bills almost every day. We had a number of transactions from Mr. Sommers such as is shown on the sheet dated May 9, 1938, out of Government's Exhibit 191, showing a currency deposit of

\$5,000.00. If Mr. Sommers brought in \$5,000.00 we would return fives, tens, twenties and hundred dollar bills.

Q. What proportion of a deposit of \$5,000.00 would be in hundred dollar bills?

Mr. Thompson: Objected to.

The Court: He may answer, if he knows.

The Witness: I should say about \$2,500.00 would be in fives, tens and twenties, and the other balance would be \$100.00 bills.

Mr. Miller: I offer at this time GOVERNMENT'S EXHIBITS X-139 to 164, inclusive, covering the period from June, 1936 to July, 1938, inclusive.

Mr. Thompson: If the Court please, we desire to object to these documents and to present our arguments in support of our objections.

(Whereupon the Jury recessed and the following proceedings were had in the court room, outside the presence and hearing of the jury, to-wit:)

Mr. Thompson: We object to the exhibits just 683 offered, on behalf of the defendant Johnson, on the ground that there is no proof whatever of any connection between the defendant Johnson and any of the transactions reflected on these exhibits and they are as to him purely hearsay.

We object on behalf of the defendants other than the defendant Sommers on the ground that they are hearsay to them.

Specifically we object on behalf of the defendants Flanagan and Mackay on the ground that they have no connection directly or indirectly with any of these transactions as far as the evidence shows.

We object on behalf of the defendant Creighton because the times when his checks were cashed, as reflected by these exhibits, was very casual, and there is no conversation, or otherwise, which in any way connects the defendant Creighton with any transactions at this exchange.

As to the defendants Kelly and Hartigan, their only connection, if any, is the proof of their proprietorship or connection with the gambling houses indicated by the initials D. D. and L. T., and H. S., which were the houses for which Mr. Downey, apparently, was bringing in checks to be cashed.

More particularly, and fundamentally, and the point we want to argue, is that these sheets of paper, and these

transactions recorded by the sheets of paper with this gentleman in his currency exchanges, does not prove or tend to prove the income of the defendant Johnson. It does not even prove or tend to prove the income of the defendant Sommers, who had direct transactions with the witness.

It shows, according to the witness' testimony, only the normal currency exchange transactions. In large volume, to be sure, but no indication that it represented income or that it represented profits or gains, in any sense of the word, to any of these defendants, and certainly not the defendant Johnson.

684 The only connection Brown could have with this is the fact that he was a rival in business. Of course, it is in no way connected with Brown.

Mr. Wait, I omitted to mention. There is certainly no connection with him and is purely hearsay as to him. (Here follows argument of counsel.)

Mr. Thompson: It has been suggested that I move to strike all of the evidence of this witness as being immaterial to the issues, and as having the same defects as to materiality and competency as the exhibits which are offered.

The Court: The objection will be overruled, and the motion to strike will be denied.

(Thereupon said documents, marked GOVERNMENT'S EXHIBITS X-139 to X-164, inclusive, were received in evidence.)

JOSEPH DUBIEL, being duly sworn, testified as follows:

Direct Examination by Mr. Miller.

I have been loan and discount teller at the Milwaukee Avenue Bank for the past three years. Prior to that I was paying teller for the same organization. I have been employed in that bank six years. As paying teller of the Milwaukee Avenue Bank I took in deposits and paid out currency against those deposits. I had occasion, from 1936 to 1937, for about eight months, to handle the account of the Albany Park Deposit and Exchange Company when I was in the payer's cage. I know Mr. Irwin Marcus. He operated the Albany Park Currency Exchange. I had some business transactions with him. I took his deposits in and

then he would give an order for currency and I would bill it and pay him out. He gave me currency orders every day. Occasionally he would mention the denominations of the bills that he wanted.

Q. What denominations of bills would he order?

Mr. Thompson: I object as immaterial; hearsay as to these defendants.

The Court: Overruled.

The Witness: He would order tens, fives, singles, silver of course, for his business. Every so often he would order some big bills, \$100.00 denominations. His orders for big bills would amount to six, seven, eight thousand dollars. He would give orders for big bills twice or three times a week.

I have seen Government's Exhibit X-191, for identification, consisting of a large batch of sheets, before. They are the Albany Park Currency Exchange Deposit tickets, made out at various times, and they are part of the permanent records of the Milwaukee Avenue Bank. They are kept under my supervision and control, in the usual and ordinary course of our business. It is customary in our business to keep such records.

Mr. Miller: At this time I will offer GOVERNMENT'S EXHIBIT X-191 in evidence.

Cross-Examination by Mr. Thompson.

At the present time I am the loan and discount teller. I was paying teller during June, 1936. I was promoted in February or April of 1937. All I know about the paying teller's transactions represented by these deposit slips is what occurred from June, 1936 to February or March or April, 1937. I stated these documents were kept under my supervision and control. I am Chief Clerk there and head teller. I don't keep the books. At the time I was paying teller all I did was cash checks and pay out currency. I

never did keep control of these deposit slips. The cashier is the head executive of the bank. He is the man that directs the department as well as the teller's department. My duties were confined to the paying teller's job up until the early part of 1937 and after that my duties were confined to a note teller's job. I might have referred to those deposit slips every so often from the time I handled them on the day of its date until the Government showed it to me here. I would have referred to them probably if

I was in the proof department at certain days, I would check deposits, too, at the end of the day's business, to help out in the proof department to prove whether the bank was going to balance that day. I would not be there every day. The days I would check the deposit slips would be at the end of the banking day. I would never look at them—they went from my window through the routine of the bank to the accounting department. I don't do all the work with them, but I still have authority with the filing clerk on all of those to keep the record straight. I am the superior of whoever files those away. The cashier does not do all the detail work. He passes some down to other junior officers and tellers. I have never been an officer of that bank. What I mean is that I do my job with respect to those deposit slips and then I pass them on through the routine of the bank to the other departments. I never make any records of these slips myself. They are filed at the end of the day by the filing clerk, when everybody is through. I don't have supervision of the filing clerk nor in her filing.

I handled as paying teller the slips dated prior to February or March, 1937. I did not handle any after I ceased being paying teller. Anything after that was handled by my successor. I know nothing about those transactions. I probably never saw the deposit slips after I ceased to be note teller.

Mr. Thompson: If the Court please, we object, first on the ground that there must be 200 separate pieces of paper here and that all of them are under one number, Government's Exhibit X-191, which happens to be on the top one dated July 24th, 1936; and none of the great mass following that are marked at all.

We also object on the ground that there is no proper foundation laid for the receipt of the documents. They are hearsay as to all of these defendants, and particularly the Defendant Johnson, and others in no way connected with these transactions. They are immaterial to the issues of the case and tend in no way to prove the income of the Defendant Johnson, or any agreement or conspiracy to evade payment of taxes on taxable income of the Defendant Johnson.

The Court: All of the objections will be overruled except the first one. You may number the sheets, X-191, A, B, C, etc., until you have exhausted the alphabet, and then start AA, BB, and so on.

Mr. Thompson: We want to add that same objection to

all that bunch of stuff that was handed in just before the recess. There are no numbers on anything but the first sheet; and furthermore, the proper foundation was not laid for the reception of those documents.

We make that separate objection to X-139, and then separately to those that follow.

Mr. Hurley: These, your Honor, are split up by months and numbered, and showing on the face number of sheets comprised in that exhibit.

The Court: Objection will be overruled.

ALFRED P. ERDMAN, being duly sworn, testified as follows:

I have been a bank teller for the Northern Trust Company since 1932. I worked in the commercial department of the bank. My duties, in a general way, are receiving deposits and paying checks for individuals.

I know the defendant Jack Sommers since, I should say, about the middle part of 1934. I met him through another account that was in the bank. Mr. Roy Love introduced Mr. Sommers to me, I imagine about the same time, around '34. It was through the account of Mr. Barnes that was in there previous that I was introduced to these men. Somehow or other Mr. Barnes evidently sold out, I guess—I don't know how they came in contact with it. Mr. Sommers came in after that, I imagine about every other day or so—maybe not quite that often. I did transact business with him. The nature of the business was to cash checks and returning cash for them. I imagine I did have some business transactions during the year 1936 with the defendant Sommers—I am not sure. I don't recall whether I did anything in '36.

Government's Exhibit X-171, for identification, consisting of 33 sheets, bound together, are my sheets, and I have seen those. They are the recapitulation sheets of the day's work. This full sheet covers one day. They cover the days from January 2nd, 1936 to March 30, 1936. Of course these are not all my sheets here. Most of them are my sheets. I can see that. Mr. Johnson's sheets, another teller in the same unit with me, are included. He works in the same cage with me.

I have seen Government's Exhibit X-170 for identifica-

tion, which covers the period from March 31, 1936 to May 27, 1936.

Q. Describe what you do with these sheets, what is the procedure followed by you with regard to these sheets?

A. Well, those are checks that are cashed. We list the items by machine, each individual item. We keep the endorsements of the City check, of the checks in the vicinity of Chicago, Illinois. Then we have what you call transit items, that are placed in a separate column, that are 689 also kept with endorsements.

You will see on the top heading it says: "Items, City checks," which means checks in Chicago. The names of the endorsers are on these sheets. These are all the endorsements here, each individual item—other than the sheets kept by Mr. Johnson these sheets in Government's Exhibits X-170, 171, are mine. They are entered in my handwriting. These sheets are kept by me in the usual and ordinary course of our business. That is one side of the sheet is made up. It is usual and customary in our business to keep such records.

Government's Exhibits X-170 and X-171 for identification, contain a record of checks cashed by me on behalf of the defendant Sommers.

Q. How on these sheets are those transactions designated?

A. We have a list of checks here that we take the first check and list the name of the endorser. Then we draw a straight line from there on down, so that we do not have to write the endorsement again.

That means that so many checks were cashed for Mr. Sommers. I made such a record of all checks brought in to me by Mr. Sommers. That is the way they are kept, like this was. I did nothing else for Mr. Sommers during this time from January of 1936 until May of 1936, except to cash checks for him and give him cash in return. Occasionally he would bring some currency in and would exchange it for new bills. Mr. Sommers did have a bank account at the Northern Trust Company. He did not deposit these checks in the bank account—he cashed most of them over the counter, and those are the checks that are shown on these sheets, Exhibits X-171 and 170. At one time I asked Mr. Sommers if it would not be better to deposit those checks. I imagine it was about six months after the time I met him. I was in my cage and he was outside of the

cage, in the bank. I had a conversation with Mr. Sommers regarding these transactions.

Mr. Miller: Q. What did you say to him and what did he say to you?

Mr. Thompson: I object to that as hearsay as to all the defendants except the defendant Sommers; immaterial to any issue in this case.

The Court: Overruled.

The Witness: I tried to have Mr. Sommers deposit those checks and then have Mr. Sommers draw his checks against them. He mentioned the fact that these checks were cashed by individuals and merchants around in the neighborhood and he didn't wish to have them in his account. That was all that was said about it, as far as I can remember. I don't recall anything further in that conversation.

Q. Didn't Mr. Sommers say that he didn't want to deposit it because he did not want it charged to his income?

A. Well, he mentioned the fact that those checks were cashed for the merchants in and around the vicinity—yes, that is right, he mentioned the fact that they—in other words, it would be charged against his income if it showed that it was his own money.

I see Mr. Sommers in the courtroom (indicating the defendant Sommers).

Cross-Examination by Mr. Hess.

There is nothing on the first page of Exhibit X-170 indicating Jack Sommers. We use both sides of the sheet, so there is two days on each sheet. There is something on sheet two. The amounts of the checks are shown as to each individual. They are not put on there at the time I cash the checks. I run them through a spindle and put them on there at the end of the day. At the end of the day I run them in on a machine and put them on this sheet. The endorser indicates the man who cashes the checks. If the checks are made to currency and a man cashes them we require him to endorse them. I was a receiving and paying teller. The Northern Trust have men who do both receiving and paying. That was my business in 1934. This system of cashing checks for Mr. Sommers without running them through his account was inaugurated in 1934 and these checks in 1936 were just a continuation of the former plan, and that system is employed by me for other people.

We ask our depositors to deposit all their funds and then

draw their own check to draw it out. We don't insist on it. If we know they are perfectly reliable we don't ask them to.

I imagine I had this conversation with Mr. Sommers about depositing some of these checks some time after I met him and he was coming in with these checks. I imagine some time in 1934.

Q. About how long after he started cashing checks?

A. Oh, some times we don't approach them until about six months after, to see how they are running it.

I had a talk with him and tried to induce him to deposit these checks in his account and then draw his checks against that account for such currency or other items as he wished, rather than cash his checks. At that time I learned to observe the kind of checks he was bringing in for cashing, and I had conversations with Mr. Sommers on that subject, and he told me that a lot of these checks that he cashed were checks for neighborhood people around in his community. The subject of the conversation was that he had no interest in the funds that were in those checks and he just didn't want them showing in a bank account against him. That conversation I have just related I believe was in 1934—it is pretty hard for me to remember just exactly when, and 692 then I kept on operating in the same method, right through 1936, and nothing else was done about it.

Mr. Hess: I move to strike his testimony, your Honor, on the ground that it does not prove or tend to prove a net taxable income of Jack Sommers, and, of course, furthermore, none of Mr. Johnson.

The Court: Motion denied.

693 CHESTER R. JOHNSON, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Chester R. Johnson. I am paying and receiving teller at the Northern Trust Company Bank. I have been employed in that capacity about six years. I work in the Commercial Department. My duties are to accept deposits and also to pay out money in exchange of checks, exchange of cash, and so forth.

I know the defendant Jack Sommers. I have known him approximately for the past five years. I first met him at

the Northern Trust Company Bank between 1934 and '35. I met him through business and the act of waiting on him at the window. I was introduced to him through the teller Erdman next to me at the time. He is the same Mr. Erdman who was in here as a witness this morning. I cashed checks for Mr. Sommers and I also made exchanges of money. How many checks I can't remember. That would occur approximately twice a week. It might have been more, I just can't recall.

I have seen Government's Exhibits X-170 and X-171 for identification before. They are teller recap sheets.

At the end of the day we listed all our work on these sheets. It is a balance sheet and that is the way we complete our day. We record all the cash we receive in on deposits and also the checks we cash and the endorsers and inter-departmental exchanges. I do not make any record on those sheets of currency exchanged with the customer.

Some of the sheets, Government's Exhibits X-170 and 171 are in my handwriting. They are all in my handwriting except those that Mr. Erdman made. Here is one that Mr.

Frank Jonas made. He is also a teller in the same 694 capacity as I am. He has been at the bank eleven or twelve years. His job is paying and receiving teller, the same as mine.

I know Mr. Jonas' handwriting. That sheet that I refer to bears the date May 7, 1936. I recognize it as Mr. Jonas' handwriting. There is another one of Mr. Jonas, dated the 14th of May, 1936. Here is one dated May 21, 1936. Here is one by a fellow by the name of Easton. He is evidently a relief teller that took the place of Number 5 the day he was off, or something like that. I know him but I do not know his writing. That is because his name is on it.

There is something on the sheets indicating who did them other than the handwriting of the individual. If anybody is off a day somebody else comes in there and takes over the window. They list their name on that, but use the same stamp as the teller that is there all the time. The only thing you can go by is the name on the top of the sheet here.

On the reverse of those sheets is the record for another day. It constitutes two days' work. I do not see any sheets other than by Mr. Jonas, Mr. Erdman and me.

Government's Exhibits X-170 and 171 are part of the permanent records of our bank. They are made in the usual

and ordinary course of business. It is customary in our business to keep such records.

It is hard to say how often I exchanged money for the defendant Sommers in 1936. As I remember, I think he came into the bank about twice a week and probably once or maybe twice a day. I just can't recall. As far as I can recall he would bring in used fives and tens. I would give him some new fives in return, some new twenties probably, maybe just a few big bills. I don't recall him ever bringing in any old big bills to exchange for new big bills.

There were some of the checks that I cashed for Mr. Sommers returned unpaid. We usually called up Mr. Sommers and he immediately came in and took care of them. We had his number and I can't remember what that was. All that I knew about it was the phone number.

Mr. Miller: I will offer at this time GOVERNMENT'S EXHIBITS X-170 and X-171.

Cross-Examination by Mr. Thompson.

I did not total the amount of checks that were cashed by Mr. Sommers at the Northern Trust Company between March 31st, 1936 and May 27th, 1936 which are indicated on X-170; I couldn't recall how much it involved. I haven't totalled those on X-171 for the later period.

I knew Mr. Sommers approximately a few months before I cashed the first check for him. I think I became acquainted with him in 1934, somewhere in there, latter part of the year, as far as I can recall.

The first check shown here on the teller's balance sheet that I cashed for Mr. Sommers is of the date January 2nd, 1936. If it is on there it must be the first one.

So far as I know, Government's Exhibit X-171 is the first group of checks that I cashed for Mr. Sommers as far as these Sheets are concerned unless there are some previous sheets that I haven't seen. The top sheet was done by Mr. Erdman. I know nothing about this particular transaction.

All of the checks that are shown on these balance sheets under these two numbers, X-170 and X-171, are checks that were cashed over the counter and not put through bank accounts.

At the top of the first sheet dated January 2nd, 1936, Illinois Bell, is the Illinois Bell Telephone Company. That is a pay day for the employees of the Illinois Bell Telephone

Company. I do not mean that that check was endorsed by the Illinois Bell Telephone Company. It is endorsed as a payroll of the Illinois Bell Company. The Illinois Bell 696 on pay days don't require us to be responsible for the endorsers if a check is lost, so that is why we list them as the Illinois Bell. It is quicker at the end of the day and it is usually a busy day when we do that. That is the reason for it.

The blank space below the words "Illinois Bell" indicates that down to the next name those were all Illinois Bell checks. Evidently Mr. Erdman has not drawn a line down there to cover the space. He should have; it means ditto.

There are no other groups of checks on the sheets there that are payroll checks that did not require endorsements. I am positive that that is the only account with a lot of checks that we do that with. I think there are so few of the other checks that we list the endorsements on all of them. There might be an insurance company once in a while that has a pay day and if we happen to get twenty-five or thirty of them we will do the same with them as we did with the Illinois Bell. But that is the only large account that we do that with. The Illinois Bell authorize the bank to cash checks without having the endorsement identified or guaranteed and without holding the bank liable for the genuineness of the endorsement. They do that because their employees usually come in at noon time and they don't have to wait around to have a check O. K.'d, etc.

The long list of checks under date of January 16, 1936, under "A.T.T." is American Telephone and Telegraph. That appears to be a dividend payday for all the employees. I guess that the Illinois Bell owns stock and they get their dividends accordingly.

The same endorsement rule doesn't hold true of the string of checks under Commonwealth Edison Company. Mr. Frankel happens to be the manager over at the Commonwealth Edison Company and he is a customer of the bank and he brought several pay checks with him to be 697 cashed. Mr. Frankel brought all these checks and I noted that he was the guarantor of the endorsements. The one "Harry Smoke," with about half a dozen checks, is Harry Smoke account. He carries his account under that name, I am sure. He brought in a group of checks and cashed them. Those are payroll checks of people coming in his store and cashed at noon on pay day and we cash them for him. The checks for two dollars, five dollars and for

three fifty might be miscellaneous checks. They might be just accommodations to his customers. He is around in the clothing district over there and they might be for a day's work in those clothing factories.

There are two checks under date of February 28th under the name of H. Alcourt, for \$7.00 and \$115.65. The big numbers are the totals of the account up above added to the one below, making a grand total for that volume of checks.

The star opposite the number means the totalling. This other long column of Frankel is the same Mr. Frankel of the Commonwealth Edison Company. I did not hear Mr. Frankel explain that he didn't want these put in his bank account so it wouldn't show as income to him. I never heard him say anything to that effect. He made no explanation about it at all.

I didn't particularly notice in looking through this bunch of balance sheets that there are many days where the sheets are in my handwriting where I cashed no checks at all for Mr. Sommers. I know there were days when I didn't.

Mr. Thompson: We object to the exhibits, Your Honor, on the ground that they are hearsay as to all of these defendants, excepting the defendant Sommers, possibly, and that they are altogether immaterial; contain no proof, directly or indirectly, to the amount of taxable income of the defendant Johnson, or any action on his part, or anyone acting for him, to conceal his taxable income.

698 The Court: Objection overruled.

(Whereupon said documents, marked GOVERNMENT'S EXHIBITS X-170 and X-171, were received in evidence.)

ROBERT DAVID SNODDY, being duly sworn, testified as follows:

Direct Examination by Mr. Miller.

I operate the Washington Park Currency Exchange. That is located at 6236 Cottage Grove Avenue. I have been in that business eight years; at that location since March 1, 1937. Prior to that my business was located at 806 East 63rd and 6305 Cottage Grove.

I have known the defendant Andrew J. Creighton, about three years. I think I first met him in 1938. I have known

him around the corner, but he came in with his business I think in 1938. I can't state definitely when; along in the summer some time. Nobody else was present at that time.

I had a conversation with Creighton at that time. He asked me to cash checks for him; said he had them two or three times a week. I said I didn't care to handle them; it involved too much money.

Mr. Miller: Q. What else was said at that time?

Mr. Thompson: We object to all of this conversation, Your Honor. It is not binding on the defendant Johnson, or any of these other defendants; it is hearsay as to them; in no way tending to prove the issues in this case.

The Court: Overruled.

The Witness: That is all that was said in that conversation. He left the building. That was the end of it for the time being. I did know what business he was in at that 699 time. He has been around the corner for a long time.

I just knew from conversations with others the business he was in. I never had a conversation with Creighton about what business he was in. He asked me if I knew what business he was in. I said, "Yes." That is all the conversation I had about that subject. I did not cash any checks for Creighton at that time.

I next saw the defendant Creighton about five or six months later at my place of business. I had a conversation with him at that time. I think it was about June or July, 1939. No one else was present.

Q. Just what did he say to you and what did you say to him?

Mr. Thompson: We object to that as hearsay as to the defendant Johnson and all of the other defendants; immaterial.

The Court: Overruled.

The Witness: He asked me if I had changed my mind. I said I didn't know. He said he would see me in two or three days. He mentioned another gentleman that had handled checks before. I said I would check up and let him know in a couple of days. I said as long as he didn't bring in too many checks at one time. He came back a couple of days later and I said it would be all right to cash a small number of checks for the time being and I cashed a few that same day.

I did thereafter cash checks for Mr. Creighton. He would come into my place to cash checks at irregular in-

tervals. Some times I wouldn't see him for a couple of weeks and some times he came in two or three times a week. A few of the checks that I cashed for Mr. Creighton were returned unpaid. I would call him at the Club Southland and he would bring the money over to me. I think I sent one check over to him and he paid it at the club. I was in the club; I saw Mr. Creighton there. It is up on the second floor of a large building. Going into one 700 room, at the end of this room is a small room, about six feet square. They let you in there and look you over, frisk you, then let you into the big room. I saw several cages, a blackboard on the wall, several cashiers' cages and men standing around in the big room. Mr. Creighton was there on the floor walking around. I didn't see him do anything in particular; supervising things.

Mr. Creighton would send checks over to me by one of his boys. The one I knew by name was Fred Gitzen. He used to bring checks over to me. Some times he would come in after change, or brought change into me. Mr. Creighton said he would send him over with the checks. Mr. Creighton did not introduce him to me; I knew him before that. I do not know what his job was. As far as I know he worked for Mr. Creighton.

In the course of my business transactions with Mr. Creighton, I occasionally would furnish him with change; some times he would bring change to me. I would give him currency for it. I didn't cash any large amount of checks for him until late in 1939. I think previous to that he would occasionally bring in the check of some customer and would endorse the check and I would cash it, just one or two odd checks, you might say over a period of eighteen months. I would say beginning about June 1938 and ended in November or December, in '39. To the best of my knowledge, from looking over the records, the volume of checks I cashed for Mr. Creighton during that period must be about forty-five or fifty thousand.

Mr. Creighton generally liked to have large bills in exchange for those checks, hundred dollar bills; some times twenties.

I do not recall Mr. Creighton ever bringing in any \$100 bills to be exchanged for new \$100 bills. I see him here in the court room (indicating the defendant Creighton).
701 Mr. Callaghan: We move to strike the testimony of this witness as to 1939; it is not contained in the bill of particulars—any reference to the defendant Creighton.

The Court: Motion denied.

Cross-Examination by Mr. Thompson.

Mr. Creighton brought in \$100 bills to be changed for twenties, tens and fives maybe a few times. He brought in old money to be changed for new money occasionally. Mostly fives, tens and twenties. I do not have any record showing these transactions with Mr. Creighton. I do of the check transactions. The Government has the records showing the check transactions. I saw them about ten days ago.

I did not add up on this record the number of checks I cashed for Mr. Creighton. Nobody added those up. I have a pretty good idea of the money checks I cashed. I think I possibly cashed two hundred or two hundred and fifty checks. I just can't recall how many of these were cashed in 1938. Just a few. All the rest of them were cashed in the second half of 1939, beginning about August or September, and continuing up to around November '39 I think.

I knew that Mr. Creighton was proprietor of this Club Southland. To my knowledge he operated the Club Southland two or three years before he did any business with me. I had not been up to his place of business before he came into my place to see me. I know that he operated other gambling houses out on the South and Southwest sides. He had one or two others I understand.

I knew he changed operations from 63rd and Cottage Grove to the south side, outside of the city limits, at certain times. At certain times the Club Southland would not be operating and then he would be operating the Club 702 Western or somewhere outside of the city limits.

He did not bring any checks in to me during the period when the Club Southland was not operating. I think the Club Southland was operating during this time when he cashed the checks with me. The checks I cashed for Mr. Creighton in 1938 were just a few single checks that he endorsed, of customers; I would say not over a thousand dollars possibly. I do not think they would aggregate more than a thousand in 1938. He would occasionally send a customer, with his endorsement on the back of the check, over to get currency. There were a few cases like that in '38. I do not recall who these customers were. I do not recall any other cases in 1938 other than those where the customers came over themselves. Whatever transactions I had with Mr. Creighton in 1938 were casual transactions.

I began to cash checks for him in quantity about September or October, 1939, and during those two or three months,

in the latter part of 1939, I had some two hundred or so transactions with him.

I arrived at this aggregate of the amount of business in dollars by looking at my records in a rather hasty manner, and also I had a general idea of how many checks I cashed for him. I have some idea it would be around forty or fifty thousand. I think the forty or fifty thousand is the aggregate in that two or three months.

My records show the names of the makers of these checks. Most of the checks are made out to cash. It would not show Mr. Creighton as the endorser of the checks. I have a particular stamp I put on the back of each check I cashed for him. That is, after I made this arrangement with him in the middle of 1939. I had some stamps made which I used to indicate I was cashing checks for Mr. Creighton, and if the check bounced for any reason Mr. Creighton took care of it.

703 My records have not been returned to me. I have not seen them for two weeks. I think when I did see them they were in the same condition as when I delivered them. I have a receipt for them. The records have been down here for about two or three months. I didn't examine them two weeks ago. I saw them. Mr. Miller had them. I didn't add them up two weeks ago. I didn't add them up three months ago. In fact I never did add them up. I just used my best idea of what those aggregate and that is from the recollection I have.

It was seldom that anybody worked in my place of business except me. I have a girl that comes in maybe once or twice a week. I operate the business alone otherwise. I have a half interest in another place.

I do my banking at the South East National Bank.

I do not know any of the rest of the defendants.

I think I have related all the conversations I had with Mr. Creighton respecting this business.

Mr. Thompson: We move to strike the testimony as immaterial and tending in no way to prove any of the issues in this case. It is hearsay to all the other defendants, except the Defendant Creighton.

The Court: Denied.

Mr. Thompson: I also move to strike it out on the ground of his uncertainty and the failure of the Government to produce documentary proof in addition. It is secondary proof of what appears on the documents and not the best evidence.

The Court: Denied.

WALTER MOGENSEN, being duly sworn, testified as follows:

Direct Examination by Mr. Miller.

704 I have been paying teller at the Mid-City National Bank, for fifteen years. My duties as paying teller at the Mid-City Bank are cashing and certifying checks. That takes it all in.

I know the defendant Andrew J. Creighton. I don't know how long I have known him. About '36 or so, when he opened up the account. I became acquainted with the defendant Creighton when he opened up an account. He was introduced to me by the official who opened the account. After I met him in that way I may have waited on him probably two or three times. That is about all I seen him, I guess. I cashed checks for him on those occasions. I used to cash checks for one of his employees. One was Al Caylor, and another one by the name of Fred. I forget his last name; I heard it. I met these employees of Mr. Creighton's in the bank. Mr. Creighton introduced Al Caylor and Al introduced Fred to me also. I can't tell exactly how often these employees of Mr. Creighton's came into the bank, but I imagine, as good as I can remember, would be probably two to six times a week. I would just cash checks for them. The checks that were brought in were endorsed by A. J. Creighton. I know his signature.

I have seen Government's Exhibit X-192 for identification before. It is A. J. Creighton's signature card. This is the only thing we have to go by in cashing checks. When a customer has an account a check must be endorsed by the customer that has the account.

These checks that were brought in by Mr. Creighton and his employees did bear the endorsement of Mr. Creighton.

The money that I would give Mr. Creighton or his
705 employees in exchange for the checks that were brought in would vary. Sometimes it was fives and tens. Then again it may be big bills, and sometimes he would not cash any checks at all. He would just bring in currency. He may bring in small bills and exchange them for big bills, or he may bring in big bills and exchange them for small bills. If I remember correctly, the big bills usually ran around one hundred dollars.

Mr. Miller: I will offer at this time Government's Exhibit X-192.

Mr. Thompson: We have no objection to 192, as far as it being Mr. Creighton's card. We object to it as immaterial. It does not prove anything, and hearsay as to everybody else, certainly.

The Court: It may be received.

(Which said document so offered and received in evidence was marked GOVERNMENT'S EXHIBIT X-192.)

No cross examination.

WALTER SCHULTZ, being sworn, testified as follows:

Direct Examination by Mr. Miller.

I have been cashier of the Mid-City National Bank since 1933. My duties are to supervise all of the operations of the bank and to have custody of all of the assets of the bank.

I know the defendant Andrew J. Creighton. I have known him between ten and fifteen years. I first became acquainted with him as being a customer of the bank. He was not a customer during that entire time. He had more than one account at the bank at different times. The last period through which he was a customer at the bank 706 was from 1935 to 1938. I had no occasion personally to transact any business with Mr. Creighton during that period, none other than to open his account.

Government's Exhibit X-192 was made out by me at the time this account was opened last. It bears the signature of the defendant Creighton. It is one of my duties as cashier of this bank to supervise and keep control of the records of the bank. I keep records of checks cashed at our bank.

We make a photograph of all checks cashed over the counter through any of the paying tellers' windows, checks that are not drawn on our own bank. After the paying teller has cashed the check, he lists those checks on a sheet, what we call a teller sheet. And those checks are delivered to what we call a draft department.

It is the duty of the draft department to also make a list of those checks to see that they agree, and then they run the checks through a photographic machine and take

a picture of both the face and the back of each check. Then those films are sent to the Recordak people and they develop the films and return them to us for our files.

They become a permanent part of the records of our bank. If a film is to be examined, we have a little projecting machine that the film is placed in and the film is put on a spool and it is lit up and then there is a white plate in the bottom of this machine. And that throws a reflection of the check right on that white plate. You can see all of the writing of each and every check that is run through.

I have seen before this pile of boxes that is down in front of me. Government's Exhibits X-186 to 190, inclusive, are rolls of films from various dates, as were in the records of the bank, and which were subpoenaed to be presented at this trial. They are in the same condition now

that they were when they left the bank. They are of 707 various dates, from October 26, 1936, until August

15th, 1938. They are part of the permanent records of our bank and the records made by us in the usual and ordinary course of our business. They are made under my supervision and control.

I would say that every bank that I know of does keep such a record.

Mr. Miller: At this time I will offer Government's Exhibits X-186 to 190, inclusive.

Cross-Examination by Mr. Thompson.

All other banks that I know of keep these kind of records. I am not sure about the Northern Trust Company. I presume the City National does.

I stated that Exhibit X-186 covers various dates from October 26, 1936 to February 26, 1937. They do not cover all of the transactions of our bank for that period of time. They were subpoenaed by the Government.

I can tell from that little box which says it is a receiving spool for use in the Recordak, which says "Received December 14th, 1936, Signed, Kodak Laboratory," what period is covered by that. It says from "December 11th, '36 to December 14th, 1936."

It is supposed to show that the photographs of checks cashed over the counter at the bank and other out of town checks that are deposited. I have not seen this film that

is in that box run off so that I know what is on it. That would contain a picture of all the checks that went through the bank for that period of time, and these checks are photographed on here in microscopic size. I do not believe you can read one of these without having it magnified. There is probably seven or eight checks to the inch photographed on there side by side. I don't know whose check that first one is up there. I don't know whether there is any of Mr. Creighton's checks on this whole spool.

708 I do know that there is checks of Mr. Creighton's in all this bunch of stuff from the bank morgue, because there was a Government man over looking at those films for two months' time. I watched him look at some of them. I do not know that he took out of the morgue the ones that had pictures of Mr. Creighton's checks on them, but I imagine he did. I knew then what he was out there for.

At the time they were subpoenaed I pulled out the boxes that were subpoenaed. We did not examine them. I did not run off any of these films. I have never seen any of the films run off since they were developed. Only when we have occasion to refer to a check which may be lost or being traced.

I don't know whether any of these checks have been run off in my presence or not since they were exposed and developed, except as I stated a moment ago when the Government agent was over there looking. I watched him and saw him look at some of the films.

The operation at that time was to put the different spools of films on the machine and go through it at length and copy information from the film. He had a record that he kept. I never saw that record.

I don't recall who that Government agent was. I do not see him around here.

I know Mr. Creighton, the gentleman sitting here at the front of the table. I think his first account with our bank was in 1928. I do not know how many checks Mr. Creighton cashed in the period running all the way from October 26, 1936 clear down through August 15, 1938. I know there is more than ten checks in that whole period. I don't know whether there is as many as one on every one of these spools that are in these boxes.

These films are all the same character and size and so

on. I have tested this machine to see whether or not
709 it correctly reproduces the object which is supposed
to be reproduced.

The machine stands just about eighteen inches high and it sets on a desk, or a stand, and the photograph of the check is projected about that distance straight down, and you look down at the check on a white plate that is part of the projecting machine. It isn't thrown on a screen. At least we have never done so. Our film is projected on this white plate which corresponds to a screen. The check reproduced is slightly larger than the normal check size.

I don't know anything about the source of these checks except Mr. Creighton brought them in and cashed them. He had a bank account there at the time. I do not believe these films contain any checks that were deposited in his bank account except in case he deposited any out of town checks. We photograph all out of town checks as well as checks cashed over the counter. Any checks that he cashed other than those drawn on our own bank would be definitely on these films.

The purpose of recording the checks is to protect the bank in case the checks are lost and we have to trace them. It is a simpler method of taking a picture than to write out the name of the maker and the name of the bank and the endorsers and a much more complete record.

Of my own knowledge I don't have any idea how many checks Mr. Creighton cashed there during this period of time. I haven't any idea what the aggregate of the checks cashed by him was.

Mr. Thompson: We object to the offer. It is certainly unintelligible on the present status. Cannot be made intelligible except by the use of a mechanical device, which is not at present available. There is no identification that this great mass of films contains records of transactions of the defendant Creighton. Certainly no identification of

any other defendant with any of these films, or, ex-
710 hibits, offered. The documents are hearsay as to all of the defendants other than the defendant Creighton. The documents are immaterial as to all defendants. Do not prove or even tend to prove the amount of taxable income of the defendant William R. Johnson. Do not prove or tend to prove any concerted action on the part of these defendants, or any two of these defendants, with the object of aiding and abetting the defendant William R. Johnson to

evade the payment of income tax on his taxable income. These large boxes, which are the only ones identified, contain a lot of individual cartons containing in turn what appears to be spools, containing in turn one hundred feet of film that is supposed to record a lot of checks. No proof that there is a check of the defendant Creighton on any of these particular films and certainly no proof that there is one on all of them, each of them. Proper foundation has not been laid for the receipt of the exhibits.

The Court: How do you contemplate making this information available to the jury and the Court?

Mr. Miller: We can produce the machine that will project these films. The easier way would be to produce the agent who made the individual examination of these films and made a memorandum of dates and months and so on of the checks that he found on these films, and make a summary in that manner.

Mr. Hurley: That is the only basis for this offer. If they want to have it available here in the court room and not offer them, we don't care. But it is the basis for summary testimony by an agent as to what Creighton checks show. We can have it either way. It doesn't make any difference to us.

Mr. Thompson: We want to know, Your Honor, whether or not these films can be projected in such a way that each and every defendant can see the testimony produced as each and every juror receives the testimony. Under the Constitution they are entitled to have it all produced in 711 their presence. And in their presence means their conscious presence.

The Court: Well, will you have a projector here?

Mr. Hurley: We can produce one if it is necessary.

Mr. Plunkett: They are available for the defendants in the same way the Government agent examined them.

The Court: I think they ought to be projected.

Mr. Miller: As a practical matter, it took the agent working on this case about two months or over to examine all this film. He sat down with this machine that the witness described and looked at every check and identified the checks that bore the endorsement of A. J. Creighton. That is how he picked the items out. For all practical purposes it would take any other individual, I imagine, just as long a time. But, we can bring the machine, the same type of machine that the witness has described, which will

project this film. If the defendants' counsel want to look at it, why, it is here available for them.

The Court: The objection will be overruled. They may be received on the undertaking to produce that machine, and if the defendants desire to examine the films they may do so during the recesses.

Mr. Thompson: Well, if Your Honor please, we shall insist on our Constitutional rights when the time comes.

(Said instruments, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS 186, 187, 188, 189 and 190.)

JOSEPH D. SHELLY, recalled, having been previously duly sworn, was examined and testified further as follows:

Direct Examination by Mr. Hurley.

I am the same Joseph Shelly that testified before in this case. I am employed by the Chicago Title and Trust Company as Chief Escrow Officer.

712 I have examined Government's Exhibits E-37 and E-38 marked for identification.

Q. I believe you examined those when you were on the stand here some days ago. At that time you went on to explain and said there were certain documents missing. Can you tell us now whether or not there was a transfer as regards those two escrows, 37 and 38?

A. Yes, in Exhibit E-37 the file shows a deposit of \$63,800. In that same file there is a withdrawal ticket for \$3800, drawn against that escrow, marked "Transfer of funds to Escrow 115566," which latter escrow is identified as Government's Exhibit E-38.

In other words, there was a transfer of funds from Exhibit 37 to 38. Those documents are kept under my supervision and control as a part of the records of the Chicago Title and Trust Company, in my capacity as Chief Escrow Officer. They are kept in the usual and ordinary course of business of that company.

Mr. Hurley: I now offer Exhibits E-37 and E-38 in evidence.

Cross-Examination by Mr. Thompson.

These transactions were handled by someone else in the Chicago Title and Trust Company. I have no knowledge of the transactions except such as appears on these documents that I have identified here. I don't know anything except what appears from the record.

According to E-38, the deposit of \$3800 was made by William Goldstein. It doesn't show that he deposited it for anybody else. It doesn't disclose any agency relation. It also shows that there was deposited a letter of direction from William Corran requesting the issuance of a trustee's deed to Abe Zimmerman, conveying certain property. That letter isn't in this envelope. There is nothing in this 713 envelope but an escrow agreement. Exhibit E-37, for identification, contains an escrow agreement, a purported copy of a receipt, a copy of statement of account, a copy of withdrawal memorandum.

The outside of the envelope shows a deposit of \$63,800. The withdrawal memorandum shows \$3800 transferred to E-38. I just looked at it.

This statement shows disbursements made out of a deposit of \$63,800. I made none of those disbursements personally. I believe that the purported copy of receipt is a carbon copy. It shows receipt of \$60,000 from William Goldstein. It does not show on that receipt whether it was currency or check or silver, or what.

The escrow agreement, by direction, dated June 10, 1939, addressed to the Chicago Title and Trust Company, reads as follows:

"You are hereby advised that the nominee in whose name title is to be taken, is Abe Zimmerman."

That purports to be signed by William Goldstein. According to that escrow agreement William Goldstein is the one who deposited the \$60,000. I do not know who Abe Zimmerman is. I do know who William Goldstein is.

Mr. Thompson: We object to these documents. Your Honor, on the ground that they are immaterial; do not prove or tend to prove any of the issues in this case, and that they are hearsay as to all of the defendants in this case, and that there has been no connection, directly or indirectly, by any witness, with any defendant other than the defendant Johnson, and that is only through Goldstein's testimony.

The Court: Overruled.

(Whereupon said documents, marked GOVERNMENT'S EXHIBITS E-37 and E-38, are received in evidence.)

714 Mr. Plunkett: At this time, if the Court please, we would like to read some of these documents, escrow agreements, into evidence.

The Court: Very well.

Mr. Thompson: If the Court please, we object to the reading of all of these documents until such time comes as we are to consider whether or not they have been properly connected up. We propose to present appropriate motions when the appropriate time comes. Certainly these documents are not connected with any of these defendants except possibly one defendant, by the testimony of a witness.

The Court: Overruled.

(Thereupon Mr. Plunkett read from Government's Exhibits E-28-A, E-27-A, E-38-A, E-29-A, E-30-A, E-31-B, E-31-A, E-32-A, E-33-A, E-33-B, E-34-A, E-35-A, and E-36-A.)

715 MR. LOUIS W. TEMPLE, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Louis W. Temple. I live at 5320 N. Sawyer Avenue. I am an official reporter, assigned to the Grand Jury. I am employed directly by Mr. Fitzgerald and indirectly by the District Attorney. I have been a reporter for approximately thirty years. I have experience for reporting proceedings of all kinds and transcribing them. I attended the Metropolitan Business College and worked for the Government following that. Then I attended the court reporting school, The Success Short Hand School, and was employed by the State of Illinois after taking the examination for that.

In my duties as court reporter it is part of my duties to report in shorthand, what is said in my presence, and thereafter to transcribe the same. I spent approximately four years at one period in studying shorthand and I continued to study it.

I had occasion, in the course of my official duties, to be present in the United States grand jury room, specifically on January 10th, January 11th, January 12th, January 19th

and January 24th, 1940. I did report the proceedings had in the Grand Jury room on those days. I have my original notes of the proceedings had on those days with me. The Government's Exhibit, O-211, for identification, contains a transcript of these notes that I took on those days. I have compared them with the typewritten transcript which is an accurate transcript of the notes that I took on those days. I have compared them with the type written transcript which is an accurate transcript of the notes that I took on those days.

I know the defendant, Stuart Solomon Brown. I see him in the courtroom (indicating the defendant, Brown).
716 The transcript that I hold in my hands, Government's Exhibit O-211, for identification, is a transcript of the questions asked and the answers made by the defendant Brown.

Cross-Examination by Mr. Hess.

I did not take any testimony of Mr. Brown on January 10th, at 10:15. The Grand Jurors, and Mr. E. Riley Campbell, Mr. Paul M. Plunkett and Mr. Lawrence Miller, were before the Grand Jury with me when Mr. Brown was interrogated at 1:15 on January 10th. The gentlemen to whom I refer were there as Assistant United States Attorneys. I was there as official reporter. Mr. Brown, the witness, was there. There were no other persons in the room. There was a Deputy Marshal at the door on the outside most of the time. I did not recognize any agents in the grand jury room at the time. I believe all three gentlemen questioned Mr. Brown. I got their names at different points. First one would question and then another. Then some members of the grand jury would question. I don't know the foreman of the grand jury. I have heard the name Binder. I did not attempt to identify any grand juror by name. I don't know what term grand jury that was. I was sworn in on January 10th. I assume it was the January jury.

Q. Was this question asked Mr. Brown on that occasion, by Mr. Campbell: "Well, that does not create the relationship of attorney and client, Mr. Ex-Cashier of the Ogden National Bank?"

A. I would have to go through my entire book to find it. If it is in the transcript it was asked. To pick out one question out of many is difficult.

717 The first time I was before the Grand Jury was on January 11th. It would be in the afternoon. I don't

know the exact time without looking at my records. The same counsel was present at that time and questions were asked the same way. The first question asked that day was: "Your name is Stuart Solomon Brown?" I don't recall all of the subject matter concerning which Mr. Brown was interrogated on January 10th when I was there but as I recall one instance there, there were some documents brought in for him to identify. It was concerning the Lawrence Avenue Currency Exchange. That was the general subject of the testimony the first time I appeared before the Grand Jury. As I remember, approximately, his interrogation was that same subject matter on the 11th, the Lawrence Avenue Currency Exchange, and its way of doing business. The next time I appeared there was January 12th. That would be in the afternoon—I don't know the exact time—somewhere about 1:30. I didn't appear there at 10:15 on that date. I don't recall the general subject matter of his interrogation at that time without refreshing my recollection.

718 I didn't say that I checked this record a few days ago. I checked this record back in March or April, somewhere back there.

I have seen Exhibit O-211 since I checked it in March. I have glanced through it this morning and from glancing through it this morning I didn't refresh my recollection of the subject matter that was being reported by me on January 12th. I know there was some testimony with respect to the burning of records. I recall that he was examined about a trip out of town and about his wife, whether he was living with her and details about certain trips out of Chicago. I recall such testimony going in there. That is in the transcript, Exhibit O-211.

Usually the Assistant United States Attorneys were asking the questions or standing near the witness. The other two gentlemen would be seated. Occasionally they were all standing. I would say that Mr. Brown was being interrogated in a normal voice. I didn't hear any threats. I don't remember any threats by anybody that if he did not testify a certain way that he would be indicted. If they were made the words would be in the transcript. I put everything in my transcript that transpired in connection with the interrogation of Brown on the occasions I have testified. There is no way of reporting the physical attitude of the interrogator, or if the interrogator shook his finger in the face of the witness I would have no way of showing

that. I reported the testimony of Mr. Brown before the Grand Jury on January 10, 1940, from 1:30 in the afternoon until adjournment at four-fifteen. On January 11th I was there approximately the same time, but Mr. Brown was not examined that entire session. On January 10th I was there approximately two hours in the afternoon. On

January 19th I was there for approximately two and a 719 half hours when Mr. Brown was examined for approximately an hour and a half. And on January 24th, although I was there all afternoon he was examined for approximately an hour, maybe less. I have not got the definite time marked down.

Redirect Examination by Mr. Plunkett.

So far as I know there were usually twenty-three persons in the room while these questions were being asked, about which I have been asked on cross examination. They were all present at the time these questions were asked. I believe the Grand Jury asked questions in the examination of that witness.

Government's Exhibit X-196, for identification, was in the grand jury room at the time I was in there. Mr. Brown, who I have been testifying about, identified it and I marked it "Grand Jury Exhibit 18." Government's Exhibit X-195, for identification, was an exhibit in the Grand Jury room, and marked "Grand Jury Exhibit 17" by myself. Mr. Stuart S. Brown identified this exhibit.

Recross Examination by Mr. Hess.

Exhibit 18 was brought in on the afternoon of January 10th, before the Grand Jury. I would say by Mr. Brown because he was on the stand at that time. I would not know if there was any interrogation by Mr. Brown on the subject of that exhibit in that session that day. I was not present. There was a question asked about this exhibit and others to the effect that if he had produced certain books that he was asked to do at a previous session. That was with respect to Exhibits 17, 18 and 19.

There were three exhibits produced on the afternoon of January 10th. He said Exhibit 17 was cancelled money orders. He said that Exhibit 19 is a record of his earnings and expenses in the operation of his business from the time

he started to the time he finished. Those are the Exhibits, together with Exhibit 18, that was produced at that afternoon session. I did identify this box which the Government attorney referred to as Exhibit 195. This was Exhibit 17 before the Grand Jury. These are the cancelled money orders to which I refer.

Government's Exhibit X-194 was a small black book that was Grand Jury Exhibit 19 that I had there that day. The subject matter of the interrogation in a general way, on the afternoon of January 10th, when I had those three exhibits, 17, 18 and 19, to which I have referred, was the Lawrence Avenue Currency Exchange.

THOMAS M. RYAN, being duly sworn, testified as follows:

Direct Examination by Mr. Plunkett.

I live at 624 West 71st Street. I have been a court reporter for thirty years.

Mr. Hess: We admit his qualifications, your Honor, as a court reporter.

The Witness: As a court reporter I have been in the employ of the United States. I was employed on January 10th and January 12th in the Grand Jury room for the United States. I did there take and transcribe testimony given by one Stuart Solomon Brown. I see him in the courtroom. I have my original notes that I took, with me, on those occasions. Since that time I have had occasion to compare my original notes with the transcript of the testimony.

Government's Exhibit O-211, for identification, contains an accurate transcript of the testimony transcribed by me from the defendant Stuart Solomon Brown on the days you mention. I do know another court reporter who was taking proceedings in the same grand jury. It was

Louis W. Temple, the gentleman that preceded me on the stand. There was no one else besides we two present in taking the proceedings in the Grand Jury room.

Cross-Examination by Mr. Hess.

I reported Mr. Brown's testimony the morning of January 10th, being pages 381 to 429 of this transcript before

me, and the morning of January 12th, being pages 865 to 877.

I checked the transcript in the proceedings on May 23d, just before testifying before Judge Woodward. I have not seen it since. I didn't see any errors in the transcript of my notes. I recall, in a general way, that Brown was being interrogated about a currency exchange that he was running. The first part of the transcription is my work at 10:15 on January 10. The heading in there is "Before the Federal Grand Jury, in re William R. Skidmore; the Grand Jury reconvened pursuant to adjournment." That was not the first day of the sessions. I got the information to put "In re William R. Skidmore" on that transcript when the Jury was impanelled on the first day. This is a continuation of the first day. No one told me it was a continuation of the first day of an investigation on other days. I put the words, "In re William R. Skidmore" because the jury was impanelled to investigate matters relating to William R. Skidmore and that only.

In connection with my transcription reporting of questions, I can not tell from memory if the following question was asked, and Mr. Brown made the answer:

"Q. Now, you state that certain of the records pertaining to the currency exchange are at your brother's home?

"A. That is right."

My answer is the same as to the following question and answer:

"Q. Are you willing to go with a Government officer to that home and get those books and records?

722 "A. Yes."

The Witness: If those questions appear in the transcript I have before me, Exhibit 211, and those answers appear to be made, then they were in fact made.

I reported Brown's testimony on January 12th, in the morning. I did transcribe those notes. I transcribed from notes by dictating into a Dictaphone and an operator transcribes the cylinders. I don't see it after that unless some special occasion is called to my attention.

I did not see this document from January, 1940, or any of it, until May, 1940. Mr. Plunkett, Mr. Miller or Mr. Campbell or the three of them together or any two of them were before the Grand Jury when I was acting as reporter. At times they all asked Mr. Brown questions while I was there. The Grand Jurors asked questions at times.

I do recall the name of the foreman of the Grand Jury. I think it was a lady, Mrs. Binder. She had been foreman for the Grand Jury during its existence.

Mr. Plunkett: The Government will offer Government's Exhibit O-211 for identification.

Mr. Hess: Well, on behalf of Brown we object to that as it purports to be an examination of this defendant before a Grand Jury which indicted him and it does not appear that he was properly advised of his rights in connection with giving testimony resulting in such an indictment; purely involuntary.

As regards to all the other persons, of course, it is hearsay. Object to all of his testimony. It was given in January. It couldn't have been given in furtherance of any conspiracy. If there was a conspiracy the conspiracy was probably ended then, according to the indictment, and in any event they knew nothing about it, so far as this evidence shows. As to them it is hearsay in all respects, and has nothing whatever to do, your Honor, with the net tax-723 able income of Johnson, which we are charged with aiding and abetting an attempt to conceal.

There is a further point. As the examination of these witnesses already shows, this transcript includes matter, subject matter, of an entirely foreign nature from that under inquiry here. Questions about his family relations, as one witness has testified here. I submit that the document as a whole, for that reason, would not be admissible.

Mr. Plunkett: As to the first objection counsel made, it appears immediately in the transcript that the witness was advised as to his constitutional rights.

Mr. Hess: I noticed that, Your Honor. I meant to call it to your attention. I wasn't overlooking anything. I contend that that advice, under those circumstances, is not proper advice of constitutional rights. It is an adversary who is interrogating you and you are put under inquisition and he is giving you advice to which you naturally answer in the affirmative.

Mr. Plunkett: There is no showing of an adversary at all. The United States Attorney is not an adversary of a witness.

Mr. Hess: He is an adversary. The evidence shows here that this resulted in his indictment.

Mr. Hurley: The grand jury does that.

Mr. Callaghan: I want to make the further additional

objection, that to admit this document in evidence would be in violation of the self-incriminating clause of the constitution of the United States.

Mr. Hess: That is what I have in mind.

(Here follows extended argument of counsel.)

The Court: I think it is admissible against the defendant Brown, and if counsel for the Government says he thinks it is all pertinent, within the next twenty-four
724 hours counsel for the defendant will call my attention to parts, specific parts of the transcript he thinks are not relevant or material.

Mr. Campbell: I think the record ought to show that this transcript has been available to defense counsel before, so that he isn't taken by surprise by this offer.

Mr. Callaghan: With the suggestion we knew nothing about the intention of the United States Attorney to offer this document.

Mr. Thompson: As far as I am concerned, I don't want the record to show I knew what Mr. Campbell has stated. I never heard of this document before.

Mr. Plunkett: The Government will also offer at this time Government's Exhibits X-195 and X-196 for identification.

Mr. Hess: Well, these are manifestly not admissible as to anyone except Brown. As to Brown they are hearsay. There is no proof of any kind that he had anything to do with the contents of the book X-196 or that he was the man who did the things that are reported in X-195. There may have been other employes, other persons who did these things and know about them. Nothing here to show that Brown did anything about these things except to produce them before the grand jury. That would not qualify them and their contents. Merely qualifies them for the physical matter that they were brought to the grand jury.

The Court: They may be received against the defendant Brown.

(Said instruments, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS 195 and 196.)

Mr. Plunkett: The Government feels it necessary at this time to read just a short portion of that transcript to the jury, if the Court will permit it, in which the defend-
725 ant Brown states he burned the records, certain of the records.

Mr. Hess: I object to reading portions. I insist that before they read any of it that the Court conclude its ruling that either all or part of it is not admissible. It is unfair to read only a part of a transcript, or a statement, to an inquiring body.

The Court: You look it over and tell me how much you want to read.

Mr. Plunkett: From the point marked on Page 407 to the last question and the last answer on Page 410.

The Court: That may be read. The Court has heretofore ruled that the transcript is admissible only against defendant Stuart Solomon Brown, and is not admissible against any of the other defendants. The jury will so consider it.

Thereupon Mr. Plunkett read to the jury a portion of the testimony of Stuart Solomon Brown before the Grand Jury on January 10, 1940.

Mr. Thompson: I desire to make specific objection to this, if the Court please. The point is that on the theory of this case, there is no act or statement of the defendant Brown that should be admissible on any theory, which could be confined to the defendant Brown. This case is solely and only a case of what Mr. Johnson's income was, whether it was evaded, and whether these men aided and abetted him or whether there was a conspiracy to aid and abet him in evading any income tax on properly taxable income. In the statements that are made here admissible against the defendant Brown, that, of course, will be argued into the picture as an act of conspiracy. Therefore, we think
726 that the evidence is wholly immaterial and prejudicial, and does not have any relation to any of the matters that are presented here; it is clearly hearsay as to all of the other defendants; there should be some showing that they had knowledge of the acts; that the defendant Brown so stated, and that those acts were in pursuance of a conspiracy which had been established.

The Court: Overruled.

Mr. Hurley: At this time, if the Court please, the Recordat machine with reference to those films is here in Court, available for defense counsel any time they want it. It has been here since last night.

Mr. Thompson: That is interesting news. We object to any such statement before the jury.

The Court: Objection overruled.

CHARLES F. BAGSHAW, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 1500 East 63rd Place. I have been an accountant for probably twenty-five years. My experience in that line has been accounting and auditing with the general public for many years.

In my schooling with reference to accounting work, I had two years at Queen's University, at Kingston, Ontario; a couple of years at Walton School of Commerce.

I know a man named Stuart Solomon Brown. I see him in the courtroom (indicating the defendant). I first knew him along July, 1938. He called me on the telephone. He 727 asked me what my fees would be to open up a book-keeping system for a currency exchange. I asked him where he got my name. He told me the Central National Bank and then I told him what my fees would be. 728 That seemed to be satisfactory. He asked me when I could come out and take care of it. I told him that I could go out possibly three or four days later.

In accordance with that telephone call I went to 3424 Lawrence Avenue. I met Mr. Brown and a young lady, his assistant, there. Miss Bernice Downey was the young lady. I did talk to the defendant Brown on that occasion at 3424 Lawrence Avenue.

Q. What did he say to you and what did you say to him? Mr. Thompson. That is hearsay as to all of the other defendants?

The Court: Overruled.

The Witness: We just had a general conversation about the opening of this currency exchange and the books necessary to keep its records in, and probably discussed rates at that time. He probably wanted to know what was done at other exchanges. Just a general conversation about the business.

I set up a bookkeeping system there for use in that currency exchange. The name of it was Lawrence Avenue Currency Exchange. I opened up a general ledger and the necessary books of original entry, such as cash books, check register, general journal, accounts payable, money order book, tellers' blotter for his cage; necessary books to run a currency exchange with. I had taken care of the books for

a number of currency exchanges, possibly twenty or more, probably in 1936, 1937 and '38, along in those years. The accounts set up in the general ledger was that a cash account or currency account, a book account, money order outstanding account, furniture and fixtures account, cash prepaid account, rent prepaid account, accounts payable, reserve for uncollected funds, reserve for contingencies. Those were all in the general ledger and following that, came income account and the operating expense account. They were in the general ledger. The cash book had all of the daily cash transactions recorded in it. There 729 was the money order account book; then there was a daily record sheet for the teller, to treat daily transactions. I believe there was another little book that Mr. Brown kept that I did not handle at all, some little book with personal things in. I didn't have that at all. In my experience with currency exchanges it is usual to use what is known as debit and credit slips of money taken in and paid out.

Q. Will you describe what those credit and debit slips are?

Mr. Thompson: Objection to going any further into all of this detail; altogether immaterial to this case; does not tend to prove any of the issues presented; certainly not the taxable income of the defendant Johnson. It is hearsay as to all of these defendants, and can't be confined to the defendant Brown under the theory of the Government's case.

The Court: The Court is not limiting this testimony to the defendant Brown; it is being admitted as against all of the defendants. Your objection may stand to this testimony or any like testimony.

The Witness: Most all currency exchanges use debit slips. Debit slips and credit slips is a method of leaving a permanent record of the cash transactions that transpire during the day, such as when the money is withdrawn from the bank. Somebody may want a couple of thousand or more. A credit slip is put through as a credit to the bank, so it is really a cash book entry that goes to the bookkeeper. If money was paid out in any amount, a debit slip will be taken and the signature of the person receiving the money.

When an order is received this money is set aside for payment. When a check comes in, the money is not paid out immediately; a credit slip is put through crediting that

account, uncollected funds account, so that these credit
730 and debit slips are a means of balancing the cash at
the end of the day. Most all currency exchanges use
that system. Whoever brought a check in and received the
money for it the next day would sign a receipt when he
received the money. The procedure in currency exchanges
on a transaction of that kind is to take two credit slips, put
a carbon paper between them, write out a credit to reserve
for uncollected funds, put the name on it, and get the cur-
rency exchange to sign it. The examiner receives one copy,
and the other copy goes to the bookkeeper to record on the
books. That is the usual procedure. When a person comes
in to receive this money, he brings back the slip. The slip
is taken from him and the cash is given to him and he signs
a debit slip, receipt to acknowledge receipt of the money.
The slip then goes to the bookkeeper to take that money
out of this account that the money has been held in. It be-
comes a permanent record of the currency exchange. It is
just a receipt for the money.

I talked to the defendant Brown about that system of
debts and credits which I have just described. When I first
went there he had stationery already purchased, but he
didn't have the proper forms. I spoke to him about the
system and the way of handling the cash and about the
way of handling the credit and debit slips and he suggested
another method because Mr. Brown had this bank experi-
ence and he knew of another method, and suggested that
method.

In order to substitute for the debit and credit slip method,
we drew up a sheet for the tellers' daily record, with two
sides, a credit side and a debit side, which would substitute
for the debit and credit slips. All credits should be entered
on the credit side, and all debits on the debit side; just a sub-
stitute for that method.

Government's Exhibit X-197 is a teller's blotter, and
this is to take care of the debits and credits I have de-
731 scribed. This was drawn up at the suggestion of Mr.

Brown. I did not see a cash account opened up in any
of these books after that. There was no cash shown of
record. I think I did talk to Mr. Brown about that. I drew
his attention to it. It was not advantageous to run a cur-
rency exchange without cash.

Q. Do you know whether or not it was customary for
currency exchanges to carry cash?

Mr. Thompson: We object to that as immaterial.

The Court: Overruled.

The Witness: Os, yes, they all carry cash.

Mr. Thompson: I move to strike the answer. There is no basis for making any such answer.

The Court: Well, he says he examined twenty-three of them.

The Witness: Yes. I have about eleven right at this minute.

The Court: Overruled.

Government's Exhibit X-198, for identification, also known as Grand Jury Exhibit 46, was the book used for those sheets. There was an account carried in the records of the Lawrence Avenue Currency Exchange, known as "Reserve for uncollected Funds." There was two methods of handling checks that came to the window on which cash was paid out immediately, those checks were entered on the teller's blotter, but there was other forms of checks that came in there on which the cash was not paid out immediately. Those were proved out on an adding machine. Then the sum total was credited to this reserve for uncollected funds.

I closed the books at the end of the month and posted the General Ledger from the books of original entry and took off a balance sheet and profit and loss at the end of each month. I would spend possibly a half a day during the course of a month on that work. I usually went there about the 3d or 4th or 5th of the month following the close of the previous month during the entire period from July, 1938 until the closing of September, 1939.

Q. Did you have occasion in the course of your work there to examine the sheets similar to Government's Exhibit X197 for identification?

A. Well, I didn't put this up, because those were the daily cash balances, but I saw them there all the time.

On the reverse side of those sheets there was a list of checks, a record of the checks, that is the maker of it, and the bank drawn on and the endorser and the amount totalled to balance up with the deposit that went to the bank. That was in typewriting. Miss Downey and Mr. Brown worked in that exchange. Miss Downey did the typing of those sheets. I think I did talk to Mr. Brown about the account known as the reserve for uncollected funds when I dissolved the partnership in October of 1939. When Brown

first started, when this reserve account was opened up, I asked Mr. Brown if these checks were credited to this account belonged to one person or a group of persons. If they belonged to different people other accounts should be opened up, reserve for uncollected funds, so that they could keep the funds separate. At that time Brown said they were from one source. He later told me that the source of the fund was Mr. Johnson.

Mr. Thompson: I move to strike that as hearsay testimony.

The Court: Overruled.

Mr. Hurley: As to this partnership, you said you stated, or that you talked to Brown about that when you were setting up these checks, is that correct?

A. Yes, sir.

I understood from Mr. Brown that the new currency exchange was to be a partnership between Mr. Brown, 733 himself, and Miss Downey, Brown told me that. When you open up books you have to know all the arrangements, how much each one is putting in, so you can open up your books accordingly. He told me how much money they were putting in there. I proceeded to make the necessary entries. If I recall, he first opened up originally with around \$3,200.00. I am just remembering now. I have not looked at my statement.

Government's Exhibit X-194, for identification, are my records and the original capital was \$3200.00 in the name of Mr. Brown. Mr. Brown was supposed to put it in there and it was credited to his account. From the records Miss Downey had not put any money in yet. That capital account was changed at a later date. Mr. Brown put in additional money later on—I just don't recall when it was, possibly several months later. All this money was credited to his capital account. Then, possibly, maybe three months after the opening, a journal entry was made splitting his capital investment and applying it to Miss Downey's. It was divided fifty percent to each. There was no change made in the capital account after the journal entry was made other than a division of the profits at the end of the first year. At the end of the first year the profits are divided fifty percent to each. As to the final closing, it was divided about two-thirds to Mr. Brown and one-third to Miss Downey the second year.

I did this auditing from the period July, 1938, to the end

of September, 1939. I usually got out there around the 3d, 4th or 5th of the month and I believe it was the third of October when Mr. Brown called me and asked if I could come out unusually early this month because he was closing the exchange—he wanted me to close it up. I went out the following day I believe. I saw Mr. Brown and Miss Downey at the Lawrence Avenue currency exchange. I talked 734 to the defendant Brown. He told me that they were closing up the exchange. I said, “What are you closing for?” He said that Miss Downey was thinking of getting married and she wanted her money out of it—he was going to close up. He did state that he had lost Mr. Johnson’s account.

Mr. Thompson: We object to that and move to strike it as hearsay statement.

The Court: Overruled.

The Witness: The account there that I refer to as the reserve for uncollected funds is correct. I did have a further talk with the defendant Brown at that time. I said, “Even if you have lost this account, why close up?” He had other business. Why give up an account in this manner.

I did make a total of these checks that went through. There was a cash turnover for the exchange of the entire period of \$2,600,000. Part of the business he lost was represented at \$1,100,000, so there was a considerable business left.

I questioned him—“Why close up?” That is the way our conversation went, along that line. Brown didn’t exactly say anything when I pointed that out to him. He was just determined to close up. That was all there was to it. I closed him up accordingly.

I did state that those checks in that account, the reserve for uncollected funds, totalled \$1,100,000.00 for the period of July, 1938, to September, 1939. The total turnover that passed through the exchange was \$2,600,000.00. Those checks and record that I have described as having set up here July, 1938, were in the exchange that day when I was talking to Brown. That was early in October, 1939.

The partnership was dissolved and the account ruled off and closed up.

I can’t say that I saw a number of sheets there similar to Government’s Exhibit X-197 for identification on 735 that day, early in October, 1939, because those sheets were filed away. The daily sheet was kept at one time,

the sheet they were working on daily. I can't say that I saw that.

I referred a moment ago to a small book that Brown kept himself. The only time I saw that book was when the balance of this reserve account for uncollected funds did not balance with his book. He was in the cage. I was outside. We called off some entries to see what the discrepancy was. He had the entries in a little book of his own personal record. In other words that would be the teller's record.

Government's Exhibit X-194, for identification, contains a balance sheet of profit and loss for each month, covering the entire period of July, 1938, until September of 1939. Those balance sheets and profit and loss statements were made by myself from the general ledger of the Lawrence Avenue Currency Exchange. When I went out there at the end of each month or beginning of the first month I took off my trial balance and made up my balance sheet and profit and loss in pencil form, and then a stenographer in the office typed it for me, and I mailed back a copy to Mr. Brown and I kept a copy. One of them went out there to the Lawrence Avenue Currency Exchange for each month, and I kept a copy.

Government's Exhibit X-199, for identification, contained the general ledger and the check register, the general journal and the accounts receivable, all under one cover, with indexes separating them.

Q. Did you have any talk with the defendant Brown early in the month of October that you have described you were out there, with reference to what should be done with these books if the exchange was closed?

A. Yes, I did.

The Witness: I told Mr. Brown that for the reason 736 that the profits of this partnership were divided 50 percent to each partner in 1938 and then in 1939 when I closed the books, that is, on this same day, they were divided two-thirds to Mr. Brown and one-third to Miss Downey, there was an unequal distribution for the entire period. Now, on income tax the Government, from my experience, is very—the income tax department are very careful on partnership returns, they audit them very closely, and on account of this unequal distribution of the profits for the second year, being different from the first year, the books should be kept in case there is examination required

later on, should be put in safe keeping. That was my reason for making that statement.

Mr. Hurley: I offer at this time Government's Exhibit 194, your Honor, X-194 and X-197.

Cross-Examination by Mr. Thompson.

X-197 is an account sheet that was incorporated in this Exhibit that I have identified here as the binder. Government's Exhibit X-198—I never saw this sheet. It came from around here some place. I drew it up for Mr. Brown originally. I drew that up in pencil and Mr. Brown drew the lines in ink and the headings. He had it photostated to get copies of it made. It is probably planographed, or whatever they call it.

I headed the first column "Edison" because in a currency exchange they accept the light bills from people that they pay and they keep the income from that separate from other incomes.

The column over to the left there is not used very much and one column happened to be Edison and another one for the gas company. That is my idea. Other currency exchanges did not use these columns at all until I suggested it to them—they did not know enough. A good many of them don't, not even today—they mix everything up together. I kept everything separate.

737 I have never testified before in my life. This is my first experience.

I have had fourteen years of banking experience. Mr. Brown accepted my system for a currency exchange on the recommendation of the Central National Bank. Whatever I said with Mr. Brown was O. K. because I came with good recommendation from a banker, I believe vice president of a bank.

Mr. Brown inquired of the bank who to get—that is where he heard of me. The bank sent me out. They gave me currency exchanges to go to and to take care of for them. Not only this bank, but another bank, the Halsted Exchange. When I went out to Mr. Brown I suggested using credit slips or a bookkeeping sheet, which he preferred. Mr. Brown suggested the sheet because that is the method they use in banks. Mr. Brown suggested the column "Edison". He did not suggest the column headed "Gas". He suggested the part they use in a bank, the teller's blotter.

The purpose of the third column is that in a currency exchange a good many merchants from around nearby come in and they want a twenty dollar bill changed into maybe quarters and dimes and nickels, and there is a slight charge for their services. That column there is to put that change in—it might be dimes and it might be nickels—I mean that is the fee for the service.

This was a sheet designed by me after my conference with Mr. Brown. The sheet was to be used to contain, in the first instance, the transactions of this currency exchange. The balance is cash from that. He had one sheet for each day. This was an original entry sheet, kept by the teller at the window of the currency exchange.

I didn't use these original entry sheets to make my financial statements that I am speaking of here. I didn't refer to these sheets like X-197 in my work down there as the 738 auditor of this exchange. I did see these sheets actually used, and some of the entries made on them. In the early part of it I showed Mr. Brown how to run it and got him so he could balance it up and then I would be through with it. He conducted it himself from then on.

In the early part of it I explained it to him, and watched him there several times to see if he ran it right and after he knew himself how to do it I let him handle it from then on and I had nothing further to do with it.

The first sheet of X-194 appears to be a balance sheet at the end of July 1938. It is prepared from the trial balance of the general ledger. I handled that personally.

C. F. Bagshaw & Co. is myself and several others when we are in a busy season. It is not a corporation or partnership—I am the owner of it.

These several profit and loss statements and balance sheets truly and correctly reflect the records of the currency exchange from period to period. I made audits myself.

I personally made up the originals of the balance sheets and the profit and loss sheets in my handwriting. There is a balance sheet and profit and loss statement for each month beginning with July '38 and concluding with September, '39.

I can't say as I ever saw William R. Johnson in my life. I can't say as I ever saw him around the exchange anywhere. I can't say as I know the rest of these defendants here except Brown—never saw them in my life before.

I never had any conversations with any of them. I didn't

concern myself with Mr. Brown's customers at all—never paid any attention to any one over there.

I testified before Judge Woodward in another hearing relating to this same subject matter.

The following question was asked at that hearing:

739 "Q. What was the advice you had given Mr. Brown?

You told him specifically, did you not, to keep these books and records?"

I presume I made the following answer:

"A. I told him in an offhand way. I don't say I was giving him any advice; I just happened to say he might need those for the return at the end of the year, just in the natural course of events. I don't say I was giving him any advice other than what he already knew."

I don't remember whether it was Mr. Plunkett or Mr. Miller who was examining me at the time I made that answer.

Q. Is that the conversation that you had with Brown where you told him that he ought to keep these books—

A. I believe I wanted him to.

Q. Just a casual conversation?

A. Why certainly. We were just talking.

I probably didn't say that word for word in the statement I gave a few minutes ago, but with the same meaning behind it. I can't say at this time, nearly a year later, the same words—but it had the same meaning—was the same.

I was called for questioning by the United States Attorney four or five times. I testified before the Grand Jury. I don't recall how many times I was talked to before I was taken before the Grand Jury—at least twice. I think I told the same story before the Grand Jury relating to these conversations. I can't say whether I did or not talk with the United States Attorney a few times before I testified before Judge Woodward. I just don't remember whether I did or didn't. I don't want to answer one way or another. Those talks took place some time last spring, about May. I got a subpoena in November for the Grand Jury. This hearing before Judge Woodward was about May, 1940
740 —this spring sometime—I just don't recall what month.

I never heard of the United States Attorney or any of his assistants for months, until I received a card from them. I was told to come over here, that they had a subpoena for me. That was Monday, the 9th, about Thursday or Friday of this week. I had a telephone call to come over, that they

had a subpoena for me, and couldn't reach me. For months I hadn't heard of these Government men. I think it was Thursday or Friday previous to September the 9th. I came in and they called me later in the day. I didn't discuss the case at that time. I never saw any of these men.

I went upstairs to the Marshal's Office and then I received this card, and then I appeared on Monday, the 9th, at the time this card tells me to appear, on Monday, the 9th. When I came up here on the 9th, I think, I saw a clerk downstairs and he told me to sit down a minute. I sat down. He came back later and told me they didn't need me. He told me to come in the next morning, and I came in the next morning. Then I saw Mr. Miller and he told me that he wouldn't need me, and kept postponing it until the next day, and then two or three days later, he asked me to come in there—well, I saw Mr. Miller. I will drop it at that point. He just asked me some questions: my name, my address, and he put that down. He asked me the date I went to the currency exchange—questions along that line. They had my address six months ago, but since that time I have moved. He asked me questions similar to what I have been asked today, with respect to books and dates and different things. I was asked more questions today than I was asked then. I was not asked very many—five or six questions. I had no idea what I was going to be asked. I was asked more today than he asked me down there. I answered before the Grand Jury probably the same thing.

741 I said Mr. Brown told me this big account I mentioned here was the Johnson account. In the currency exchange, doing auditing like I was, it was more than natural that I know all these things. Mr. Johnson's name was not on a single book in that exchange. I never saw it,—never saw Bill Johnson or any other Johnson. He always referred to it as "Johnson". I never knew Johnson's first name. I didn't know what Johnson he was talking about. He never mentioned any other persons' account to me by name.

There was a lot of activity in that account—a lot of figures I was balancing there—naturally he told me it was Johnson's account. I didn't find out downtown or any place else but from Mr. Brown. No one else knew Mr. Brown's business except Mr. Brown, himself, Miss Downey and myself. I didn't get it here at the Federal Building. The first I ever heard of such a man was in existence as Johnson was

in the currency exchange. I never heard of him before. I didn't know anything about the person to whom reference was made, at that time I didn't know. Mr. Johnson was the same as any other name to me at the time. I didn't know him—only what I have read in the newspapers. Mr. Johnson was a total stranger to me, even for months after. He is still a stranger as far as his name is concerned. That name might have been a woman's name—no prefix was given to it. It might have been a corporation. If a person wanted to cut it short they might refer to a corporation. We called one account there the Edison account. That was not an individual. We called another one the gas account. The first conversation where Johnson was mentioned was after I opened up the system in the currency exchange. I can't tell you the day—it was a year and a half or two years ago. I can't tell you that. It would be sometime in July of 1938 when the reserve for uncollected funds account showed activity. That is the name of the account. There were 742 numerous entries in the account, and no names of persons. There was no indication as to who was the creditor, as to the debit items in that account. There was nothing on that sheet of paper to show who the debtor was as to credit items in that account. Mr. Brown told me that was Johnson's account. There was positively not any person's name on there at all, the maker of the checks, the payees of the checks, or anything else. I don't know about Johnson's name being mentioned a second time. I know another time it was mentioned at the final closing of the exchange. I don't know of a second time. This second time I mentioned that was when the exchange was closed. Mr. Brown said he was closing the exchange because he was losing Johnson's account. That was the purpose. That is true.

The reserve for uncollected funds account was the one to which I referred. That reserve for uncollected funds is on the checks put through for collection. I don't know how long those items would stay on the books. The reserve for uncollected funds would show when the check was received for collection, and the account would be debited when the check was paid to the customer. If checks were received in the amount of \$5,000.00 there would be a credit for \$5,000.00 put in the account, and when that amount was paid out it would be on the other side. It didn't double. It would be the same amount. The aggregate of the two would be double the face of the checks. That account totaled \$1,100,000.

The reason it brought about the conversation as to whether all the checks belonged to one person were those checks. That is where Mr. Johnson's name was first mentioned in July, 1938, when the exchange opened. The name was just the "Johnson" account—like you would speak of the Edison account. For the entire period there was a 743 little over a page used. There was \$1,100,000.00 represented on that page. That is the end of the period. There was only one item in this account on the day of the conversation, because the cash book only carried one credit or one debit in the month. I asked if it was the total of the numerous items that belonged to one person or several persons. Those numerous items were recorded on that sheet you have there, the maker of the check and the payer. That sheet wouldn't mean anything to me. I didn't pay any attention to that. I didn't pay any attention to who the payees were. It showed the total of the checks received. I am speaking of the reserve for uncollected funds.

On the back of Government's Exhibit X-197 a special description of each check appeared. All of those checks to which reference was made in the total on the front of the sheets—those were all put on there in typewriting. It should show who the makers of these checks were. I can't say as I examined it, but it should have—it was designed for that purpose. It should show who brought the check in to be cashed. In all of my examination of that account I never saw the name "Johnson" anywhere on any of these books.

I did not make a written statement for the United States Attorney as to what I knew about this matter. I have not seen a transcript of my testimony before the Grand Jury.

Mr. Thompson: If it is available, then, we would like to have it for examination. We ask that it be produced.

The Court: Do you object to producing it?

Mr. Hurley: Yes, sir. It is testimony before the Grand Jury.

The Court: Objection sustained.

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On L. S. C.

VOLUME III
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941 **1942**

No. 798 **4**

THE UNITED STATES OF AMERICA, PETITIONER

vs.

WILLIAM R. JOHNSON

No. 800 **5**

THE UNITED STATES OF AMERICA, PETITIONER

vs.

**JACK SOMMERS, JAMES A. HARTIGAN, JOHN M.
FLANAGAN, ET AL.**

**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**PETITION FOR CERTIORARI FILED DECEMBER 12, 1941
CERTIORARI GRANTED FEBRUARY 2, 1942**

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 7500 *vs.*
WILLIAM R. JOHNSON,
Defendant-Appellant.

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
No. 7501 *vs.*
JACK SOMMERS, ET AL.,
Defendants-Appellants.

Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.

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744 ALBERT BISSELL, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Albert Bissell. I live in Evanston, Illinois. I am a salesman employed by the Keystone Manufacturing Company, Boston, Mass. I know the defendant Jack Sommers. I first met him in 1933 at Kedzie and Lawrence, at the Horse-Shoe Club. It was a gambling house. I did have occasion to gamble there and at other places in Chicago. I gambled at the Southland Club at Cottage Grove and 63rd, at the Harlem Stables on Harlem Road near Irving Park, at the D and D Club on Dearborn and Division, and I think it was the Casino at Irving Park, in the bank building, and the Lincoln Tavern. After my first meeting with the defendant Sommers, I have seen him at the Lincoln Tavern and the Stables. I had a conversation with Sommers in the month of July, 1937, at the Horse-Shoe Club at Kedzie and Lawrence in that I had more or less gambled over my means. I think the conversation was in Mr. Sommers' office. I don't think anyone else was present that could hear the conversation, but there was a cashier there.

Q. Will you relate what you said to Sommers and what he said to you?

Mr. Thompson: I object to that as hearsay, as to all the other defendants and as immaterial to the issue in this case on the taxable income of the defendant Johnson.

The Court: Overruled.

The Witness: I explained to Mr. Sommers that I had gambled beyond my means. I had lost for the last three 745 or four days a considerable amount of money and wondered if it would be possible in any way to grant me a loan for a while. Mr. Sommers said it possibly could be arranged, and I said, "Well, could that be done?", and he said, "I will get in touch with the boss." I said, "That would be a very nice thing to do, if you could." I asked him if he would do so. So he went to his office and a telephone number was either—I don't know whether Mr. Sommers dialed it or not, or whether he asked his cashier to dial it, but that number was dialed and the only part of the conversation I heard was Mr. Sommers say to the other party,

"Yes, he did." After that he said, "Okay", and hung up. And I asked Mr. Sommers what he meant by "Yes, he did" and he said he was asked on the other end of the 'phone if I had paid up the loan I had made previously on a similar occasion, and Mr. Sommers said "Yes, he did"; and the party at the other end then said, "Well, let him have it again." During the course of our conversation, I asked Mr. Sommers who this big boss was and he said it was Mr. Johnson. That was the end of the conversation, and I got the money. I got my loan. Mr. Sommers gave me the money.

The circumstances under which I made the prior loan were the same in that I indulged beyond my means when I asked for a loan. That must have been over a year or two before. It was at the same place then at that time they also — Mr. Sommers said that possibly it could be arranged and he called Mr. Hartigan in conference and the two of them went into the office. I stayed outside and when they came out why they gave me the money. I did have occasion while I was gambling at the places I have named to issue checks.

At the time I issued the checks they represented a loss 746 for that evening's play. It is true in every case except on two or three occasions. I didn't lose any money except the money I had with me and I cashed a small check of not more than twenty-five dollars to ride me over the weekend, or something like that. Any other checks issued were in payment of losses at that same evening.

Government's Exhibit X-200 is a check drawn by me for \$100.00. That represents a loss beyond the money I had with me that particular night. X-201 is another check for \$100.00 which represents the same thing. X-202 is another check for \$100.00 which represents the same thing, and X-203 is a check for \$75.00, the same conditions. X-204 is a check for \$100.00, the same thing. X-205 is a check for \$50.00, the same conditions. X-206, \$50.00, the same situation. X-207, \$100.00, the same thing.

I don't think the exhibits I have been talking about were cashed in the gambling houses that I have mentioned heretofore because as a rule I was given \$100.00 to gamble with. When I went out I just left the check in payment of that \$100.00 and the checks very likely went to their bank. These checks were left at the gambling houses where I have gambled.

Mr. Thompson: If the Court please, we move to strike this testimony on behalf of the defendant Johnson on the

ground there is no connection with this transaction and hearsay as to him.

The Court: Motion denied.

These checks, Government's Exhibits X-200 to 207, were paid through my bank account and charged against my bank account. I see the defendant Sommers in the courtroom. He is the same person about whom I have been testifying. I see the defendant Hartigan in the courtroom. He is the same person about whom I have been testifying.

These checks do not represent all the checks that I 747 issued. The others are very likely destroyed. I couldn't answer how many more there were.

Mr. Plunkett: The Government will offer Government's Exhibit X-200 to X-207, inclusive. You may cross-examine.

Mr. Thompson: On behalf of the defendant Johnson, we object to the offer on the ground of immateriality, and not tending to prove anything with respect to the taxable income of the defendant Johnson or any other issue in this case, and they are hearsay as to him.

Mr. Hess: May I reserve my objection until the cross-examination?

The Court: Yes.

Cross-Examination by Mr. Hess.

I have been a salesman for twenty-five years. That is practically my entire business life. I gambled before 1933. These occasions, commencing in 1933, were the commencement of my gambling to any large extent. I just moved to Chicago that year. I only gambled in the Navy before that. I don't know whether that was permissible in the Navy. I told you all the places that I gambled in the Chicago community, that I thought were Johnson houses. I gambled in what I thought was Johnson houses.

Q. Did you gamble where you didn't think they were Johnson houses?

A. No, I didn't.

Q. Where else?

A. I gambled at the Chez Paree.

I gambled out in Cicero on West Roosevelt Road. I gambled at Indiana Harbor besides those two places. 748 My activity in that line was quite frequent and I gambled way over my head at times. That commenced in 1933. I lost money at the Chez Paree. I don't know how

much. I have won there, small amounts maybe \$50.00 or so. I did not win more than I lost. The same circumstances I would say about Indiana Harbor. In every one of these places where I gambled my losses exceeded my gains. I have not added up these exhibits that I have identified. I don't believe there was any particular period of time in 1936 and '37 that I gambled more than at other times.

My activities were about a normal keel in this gambling business. These exhibits that are from February 24, 1937, to March 25, 1937, approximately one month, do not represent my losses in that month. I did lose more. I never issued a check until I lost the money I had with me. I did not give the check until I left the place. Therefore, I lost the money there again I was given. I lost more than \$100.00 on that game on February 24 when I issued Exhibit 201 because I went in with money. I would not say positively that my loss was \$50.00 on February 27th, Exhibit 205. I may have had some that I went in with. Exhibit 206 on March 1st, \$50.00 was not my loss. None of them were.

Exhibit 200, March 4th, \$100.00 was not my loss. Exhibit 207, \$100.00, March 5th, is not my loss. Exhibit 204, March 17th, \$100.00 is not my loss. Exhibit 202, March 23rd, is not my loss. Exhibit 203, March 25th, \$75.00, is not my loss. Those do not represent my losses exclusively. During this period of time covered by these exhibits I had some winnings

now and then. There were a large number of occasions that I would walk out with cash that I had won.

I had winnings, but I would lose them the next day. I would not win every other day. I might lose for three or four days or a week. Then I would possibly win for three or four days. I knew I lost more than I won. I wouldn't say I was about even on the whole.

I don't know how much I won in the month of February 24th to March 25th, 1937. I won now and then. I earned this money that I lost. At that time I was of an earning capacity that I could lose \$675.00 in one month. That was about the time I had the conversation for a loan. I would like to retract the statement that I could afford to lose that much money. I did lose that much money. I had it to lose. I think some of it that I lost was what I had won on previous occasions. I did always have a bank account. I had one during the year 1937. I think the other checks that I might have issued are lost or destroyed. They couldn't be the only checks in the year, if I gambled that much. These

are not the only checks that I issued for gambling debts. They are the only checks I could find.

February 1937 or February of any year at that time happened to be the best time of the year for me, because I usually was paid a large bonus at that time of the year. That was my accumulation when I started my winter's gambling. I definitely did approach Mr. Sommers for a loan two times, possibly three. The first time was prior to the issuance of these checks which I have referred to here as exhibits. None of these checks are in repayment of that loan. I am positively sure of that. I did repay that loan by check. The check in payment of that loan was larger than any of those checks. It may have been two 750 checks and I do not have those checks. At the time I got that loan I had been gambling in the Horse Shoe Club. That is the only place I ever asked for a loan. I never asked for one at the Chez Paree. I got the second loan in July, 1937. I think it was five hundred or five hundred and fifty. I am not sure. I did sign a note. I was given the currency when I signed the note. I went on a vacation with the currency. I explained to Mr. Sommers that I wanted some money for a vacation. I had lost the vacation money. I had to borrow some money from the man to whom I had lost it so I could go on a vacation. I did repay most of it. I don't know exactly how much, most of it. I don't think I owe most of it. I know they had sent a man down to my office there every week for some money. I gave him cash. I don't remember definitely what the largest sum was I ever walked out of the Horse Shoe with as winnings, approximately two or three hundred dollars. That occurred on several occasions. I would go to some of these gambling houses once or twice or so a week. I don't think I ever walked out of any of the clubs as a winner of any larger amount than two or three hundred, although I have won more than that, but I have never walked out with it. I won \$1200.00 one night at the Horse Shoe Club. They sent out for dinner for me and served me dinner at the place. After dinner I went back and lost. I did not carry that out of the Horse Shoe. I lost it again. I would come back and gamble some more. I was trying to make up my losses. I am not still a gambler. I quit. I learned my lesson.

All of these checks that I have been identifying here by exhibit numbers were not all cashed by me at Mr. Som-

mers' place, the Horse-Shoe. I think you could tell 751 better than I could from the stamping on the back of the bank they were deposited at. It would be in the neighborhood of the gambling house to which those checks were cashed. They were not cashed exclusively at any one place. I did cash checks at the Chez Paree. I have not got them. They are destroyed or lost. I did cash checks in Indiana Harbor. I can't find them. Those are the only checks I can find of any of my gambling losses. I couldn't say about this other place, 12th Street. I never cashed any checks at the Cicero place. I did gamble there. I lost. I went back and gambled more to try to make it up. I never gambled in Cicero at the time. I gambled at any of the houses I have mentioned. It was after they were closed. Between 1933 and 1937 I was going to gambling houses in Chicago in the neighborhood, losing sometimes and winning sometimes, but mostly losing.

I am not sure whether Mr. Sommers dialed or whether he asked his cashier to dial the telephone in the office. I don't think the cashier was present at the conversation. I think I asked for it outside of the office. Then we went in the office. Mr. Sommers did not go any place to tell somebody to dial the telephone after I asked for the loan. It was done right there together. I doubt if the cashier could hear him because he was quite a ways up. We were down below. He was attending to his business.

I was also at the Horse-Shoe when the first loan was made. I don't know what time of the day or night. I don't know what time of the day or night it was when I got the second loan. I think it was night time. I play dice.

I did play in the daytime. I wouldn't say I played my 752 dice games more in the daytime than I did at night. I played at night, too. I have no office. The office of the people I work for is in Boston, Massachusetts. I was not with this firm at that time. I had an office at that time in the Garland Building. It was the branch sales office of the New York firm. I was my own boss. I used to get there about nine o'clock. I used to leave around five-thirty. That occurred every day. During these hours I did do dice duty. I used to take the afternoon off and go out and have a little holiday at the Horse-Shoe. That is true of the Southland. I was there both in the daytime and nighttime. The only game I played was dice.

The firm that I was with at the time I was gambling was the Lionel Corporation, the toy business. I am not

with them now. I ceased to be in their employ about a year and six months ago.

Mr. Hess: Now, with respect to these exhibits, if the Court please, I wish to note an objection that they are a lot of unintelligible letters, I notice on them, that do not appear to have anything to do with anybody in this case, indicated there, and also bear certain stamped endorsements that has no connection with any of these defendants and in any event, taking them as a whole, it is almost impossible to determine who, if any of these defendants, these checks are intended to apply against, excepting Mr. Sommers, perhaps.

So we object on that reason and on the reason they are immaterial to the issues in the case.

The Court: Objection overruled. They may be received.

(Whereupon said documents so offered and received in evidence were marked GOVERNMENT'S EXHIBITS X-200, X-201, X-202, X-203, X-204, X-205, X-206 and X-207.)

753 Mr. Thompson: That ruling also applied to the pending objection I made on behalf of Mr. Johnson?

The Court: All of them.

Mr. Hurley: Your Honor, I do not believe there was a ruling on this offer that was made before the noon recess, X-197 and X-194. I think it was withheld pending cross-examination by counsel.

Mr. Thompson: I am not sure, Your Honor, whether I noted the objection. We adjourned just at the conclusion of my cross-examination. I do object on behalf of the defendant Johnson on the ground that neither of the exhibits here are identified with Mr. Johnson and no connection shown which is binding on Mr. Johnson. It is hearsay as to him entirely and immaterial to any issue in the case, as far as Johnson is concerned, and certainly as far as all the rest of the defendants are concerned, other than the defendant Brown, it is hearsay and immaterial, and no connection whatever shown with any defendant, with any of these exhibits, except the defendant Brown.

The Court: I think the objections to X-194 and X-197 may be overruled and the exhibit may be received.

(Which said documents so offered and received in evidence were marked GOVERNMENT'S EXHIBITS X-194 and X-197.)

JOHN MLCKOVSKI, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is John Mlckovski. I am the manager of the Lawndale Currency Exchange. It is located at 2204 South Pulaski Road. I have been in business since 1936. 754 My duties in a general way as manager of this currency exchange are to cash checks, issue money orders, accept utility bills for payment, and exchange currency.

I know the defendant John Flanagan. I first met him about four years ago, some time in the year 1936 at the Lawndale Currency Exchange. Mr. Albert Couch introduced me to the defendant Flanagan. Mr. Herbert Hillman, the manager of the currency exchange at that time, introduced Mr. Couch to me at the Lawndale Currency Exchange. I have only known Mr. Couch to be at 4020 Ogden Avenue. I did transact business for Mr. Flanagan and for Mr. Couch. The nature of the transactions were to cash checks and exchange currency. I wouldn't remember how often Mr. Flanagan brought checks into my place. Mr. Flanagan did bring checks in to cash. Sometimes it would be quite regular, when they would be open. Sometimes he would come in, maybe once or twice a week, maybe three times a week. I don't quite remember how many times he would be in. I did keep a record of the transactions I had with Mr. Flanagan. The checks cashed by me on behalf of the defendant Flanagan were endorsed. I kept a record of the checks that I cashed on the record sheet.

I have seen Government's Exhibit X-175, for identification, consisting of a group of 26 sheets before. These are record sheets of checks that had been cashed in the course of business. They covered a period from May 7, 1936, to December 31st, 1936. A sheet like this was made for every day we did business. I wrote down the information that is on these sheets. I would put down the number of the check in the first column, and in the next column, the dates of the checks, then the maker of the check and the endorser. The other column was for the bank 755 number. The column second to the last was for the amount of the checks, and the last column was the

fee that we charged for cashing the checks. I kept this record personally. This is part of the permanent records of the Lawndale Currency Exchange. I would identify the checks cashed by the defendant Flanagan by putting down the description of the check and the name of the endorser of the check. That is also true of Mr. Couch. That item is a check on there brought in by Mr. Flanagan. This column is the maker of the check. The fourth column from the left would be the first endorser, and the fifth column from the left, the second endorser.

Government's Exhibit 175 was kept by me in the usual and ordinary course of our business. It is usual and customary in our business to keep such records.

Government's Exhibit 176, for identification, is the record of the checks cashed in the course of the business. That is a daily record kept by me, and I enter on that record the checks cashed by me at that exchange. That is in my handwriting. Those records are made in the usual and ordinary course of our business. They are a part of the permanent records of the Lawndale Currency Exchange. It is customary in our business to keep such records. All of those sheets are not the same form of sheets. The difference in the form of the sheet is explained because we changed the form on July 26, 1936. The smaller sheets contain the same information that the larger sheets do.

Government's Exhibit 177, for identification, consisting of a group of 81 sheets, is a record of the checks cashed in the course of business covering the period of March 9, 1938 to August 18, 1938. They are in my handwriting, 756 kept by me in the usual and ordinary course of our business.

I do not know where Flanagan's place of business was or is. I just knew him as 4020 Ogden Avenue. It is a gambling establishment. I knew Couch as at 4020. When I cashed the checks for Mr. Flanagan or Mr. Couch I would give them whatever denominations of money I had on hand. Mr. Couch would bring in currency. I would exchange it for hundred dollar bills. I would say sometimes it would be once or twice a week and maybe once or twice a month. Mr. Flanagan brought currency in to the exchange. I gave him back hundred dollar bills. I did order currency especially for Mr. Couch. That was done at his request. Mr. Couch sometimes would come in and tell me to order the hundred dollar bills for him. He would

come in and then take the order that he had given me and exchange it. He would give me currency of smaller denominations for the hundred dollar bills.

Mr. Flanagan asked me to get hundred dollar bills for him. I did. He gave me currency of smaller denominations for the hundred dollar bills. Mr. Samuel Hillman is my boss at the Lawndale Currency Exchange. He also has the Roosevelt Currency Exchange. The Lawndale Currency Exchange is connected with the Roosevelt Agency and Loan Corporation. It is a branch. I would call our main office in obtaining the hundred dollar bills ordered by Mr. Couch or Mr. Flanagan. The main office is the Roosevelt Agency and Loan Company at 4003 Roosevelt Road. And they would call the bank and the bank would deliver the money to me. The bank would deliver the money to me on my afternoon delivery. It would be the same day that I put in the order. I would order currency through our main office twice a day. The first order

would be about 12:00 o'clock noon and the other one 757 around between two and three o'clock. I would get the one I put in at 2:00 or 3:00 the following day. I had no other customers at the Lawndale Currency Exchange that ordered hundred dollar bills.

Cross-Examination by Mr. Thompson.

There are four exchanges in the chain with which I am connected. They are located at Madison and Crawford, Roosevelt and Crawford, Ogden Avenue between 22nd and Ogden, and 26th and Crawford. The Lawndale Currency Exchange transacted this business with Mr. Flanagan that I have been describing. The address is 2204 Pulaski Road. That is the present address. 3953 West Ogden Avenue was the address when we first began to do business with Mr. Flanagan, I think about four years ago.

The first transaction that was had with Mr. Flanagan was recorded on sheets X-175. They are the transactions of the currency exchange. I wasn't in the currency exchange at that time. Mr. Herbert Hillman was. It looks like his handwriting. I testified that these sheets X-175 recorded the transactions with the Lawndale Currency Exchange in which Mr. Flanagan was involved. The first transaction Mr. Flanagan would be August 10, 1936. I determined that by the fact that the words "J. M. Flana-

gan" appear in the third wide column from the right. There is nothing on the sheets prior to that with respect to Mr. Flanagan. That is a transaction with the defendant John Flanagan on the second sheet. The date is May 23rd, 1936. According to the records, I would say that is the first transaction that was had with Mr. Flanagan at this currency exchange. The maker of that check was Mickey Rafferty Cafe. I don't know where that cafe is located. That check was payable to cash. It was drawn on bank 70-1741. I don't remember what 758 the bank would be. It was for \$602.25. I don't know what that transaction related to. That was just a single transaction. I did not handle that transaction. It looks like Mr. Herbert Hillman's handwriting. The Exchange was located at 3953 Ogden Avenue on May 23rd, 1936. I don't know whether Mr. Flanagan was then operating a gambling parlor at 4020 Ogden Avenue. I don't know anything about this transaction, only what this record shows.

The transaction with Albert Couch is with the Mr. Couch I have been talking about. That is on the third sheet here which is dated June 16th, 1936. I don't know anything about that transaction, just that it was a check that was cashed. I assume that because that is what the record shows. The first one up here is not in my handwriting. The one four or five lines below, Albert Couch, is in my handwriting. That was cashed June 16th, 1936, at the same time. I handled that transaction. I was introduced to Mr. Couch as at 4020 Ogden Avenue. Mr. Herbert Hillman introduced me, and he told me that he worked over at 4020 Ogden Avenue. I didn't know Mr. Couch prior to that time. That is all I know about the transaction. Up to that time I hadn't seen Mr. Flanagan. I had had no conversation with Mr. Flanagan about Mr. Couch.

That is my handwriting on the next page on July 3d, 1936, which apparently was a check cashed by Mr. Albert Couch. That check was drawn by the Church of the Annunciation. I do not know who drew that check other than that name, Church of Annunciation. That is the maker of the check. That is for \$600.00. "Sil" means Silver. That is the exchange on silver. We used to put the exchange on silver on the sheet there. We charged 759 ten cents exchange on silver, and \$3.00 was the fee for the \$600.00 check. I don't know anything about the circumstances only that Mr. Couch brought in a

Church of the Annunciation check for \$600 and got cash for it. I do not know whether that had any relation to 4020 Ogden Avenue gambling house or not. I hadn't up to that time met Mr. John Flanagan. That is July 3d, 1936. I don't think I had seen Mr. John Flanagan up to that time. The record of the check on the sheet of July 7th, 1936, which is apparently cashed by Albert Couch, is in my handwriting. That check was made by the Morton Park Federal Savings and Loan Association and was payable to James V. Iowania for \$70.00. All I know about that transaction was that I cashed a check. I cashed it for Mr. Couch, but I don't know whether it had any identity with this gambling parlor. Just one transaction there on that day with Mr. Couch was made. The next one after July 7, 1936, was August 4, 1936, with Mr. Couch. That is in my handwriting. That check was made by A. H. Rate, payable to Frank Vase. "Fr." means "Frank". That is the way they abbreviate it. I do not know Frank Vase. I do not know if there is such a person. I wouldn't know whether it was Father Vase.

The next time Mr. Flanagan's name appears after May 23, 1936, is August 10th, 1936. On that day two checks were cashed. Each check was for fifty dollars. Both checks were made by J. R. Frank. I don't know Mr. J. R. Frank. This is my handwriting. As far as cashing a check was concerned, that was the first transaction I had with Mr. Flanagan personally. I don't know whether I met Mr. Flanagan before August 10th, 1936. When I met him, he came in with Mr. Couch and Mr. Couch introduced me to Mr. Flanagan. That would be about four years ago. I wouldn't recall that in connection with this

760 first transaction when I cashed these two checks for Mr. Flanagan. I don't remember whether I cashed checks for Mr. Flanagan the first time I met him. Mr. Couch introduced Mr. Flanagan to me. I am sure it was not the other way around, that Mr. Flanagan introduced Mr. Couch to me in our exchange. I don't remember whether I was by myself there at the time these two men came in. That is all I remember about him. August 10, 1936, is the first check, so far as my handwriting indicates, that I cashed for Mr. Flanagan.

Q. Not another check in that bunch from Mr. Flanagan, is there?

(No audible answer.)

Q. You were watching, weren't you?

A. Yes.

Q. Not another check in that bunch?

A. Well, as far as the endorser on that sheet is concerned.

Q. Well, if you cashed a check that Mr. Flanagan brought in, you would write his name on here, wouldn't you?

A. Some times we were busy and we didn't put it on.

Q. How are you going to tell then, which checks Mr. Flanagan cashed and which he did not cash on these sheets?

(No audible answer.)

Q. Do you know?

(No audible answer.)

Q. Do you, Mr. Mlekovski?

(No audible answer.)

Q. You don't know, do you, that Mr. Flanagan ever cashed over two checks in this whole period represented by this bunch of sheets X-175, which ran from May, 1936, through December, 1936?

761 A. There may have been some checks that were cashed there, but—

Q. Were there?

A. No.

The currency exchange down on Ogden Avenue was open from nine to six. There was another currency exchange at 26th and Crawford, about four blocks. The bank at Cicero Avenue is the only other exchange around there for accommodation of that kind. I would say the bank was about a mile away. If anyone wanted to cash a check in our immediate neighborhood they had to go to one of these two currency exchanges, that is, unless they went to a store or some place else as an accommodation. The only institution holding itself out in the four blocks either way from our place of business was our own currency exchange. The Chicago Diner, a public restaurant, is located right there in the neighborhood. I don't know that it is open twenty-four hours a day. It is open all the time I am in the neighborhood. There is a street car barn right close there, and the street car men go on duty and off duty at that barn. That barn was a block from our currency exchange. At the present time we are located at 2204 Pulaski. I would say just about half a block from 3953 West Ogden Avenue. One is on Pulaski, the other one is on Ogden. We were at 3953 West Ogden at first. That would be on the south side of Ogden Avenue and this present address of 2204 Pulaski is within a block of the other location. This car barn is within a block of this location we are talking about.

The Western Felt Company is another factory right in the neighborhood. The Cab Sales and Parts Corporation is not in the neighborhood. The institution indicated 762 here as Cab Sales and Parts Corporation is probably a check that I cashed for somebody. The concern that is named here as the maker of quite a block of checks is the Cab Sales and Parts. I wouldn't know about the Cab Sales. I think that is a Checker Taxi. There is a Checker Taxi stand on Crawford and 22nd. I don't know any of these payees, Mr. Straver, Mr. Tenen, Mr. Sterling, Mr. Moskovitz. That whole block would appear to be payroll checks cashed by Mr. Couch on May 4th, 1937. I don't know anything about where he got those checks or how he happened to be bringing them in to cash them on this day. He may have cashed them as an accommodation to these working men and then brought them in to be cashed the next day. I know I cashed them for Mr. Couch. That is all I know about it. The checks are only small odd amounts, \$9.48, \$17.51 and \$10.71. I think we omitted the first endorser on the 1938 sheets. We put on here the maker column and the final endorser, the person we would cash the check for on the last wide column.

The first check cashed by Mr. Flanagan in 1938 is right on the first page. This initial, J. M. That is J. M. Flanagan. J. J. Dugan would be the maker of the check. Frank Morgan would be the payee or the succeeding endorser on the check. There was only one check there cashed by Mr. Flanagan on March 9, 1938. That check was one that was made by Mr. Dugan, payable to Mr. Frank Morgan apparently. I don't know anything about where that check came from or what the transaction was represented by the check. The next check Mr. Flanagan cashed would be March 21, 1938. There were three checks on that day. The next checks cashed by Mr. Flanagan in 1938 were March 22nd, three checks. The next is April 2, 1938. From March 763 22nd to April 2nd there were no checks cashed by Mr. Flanagan. He cashed one on this day that I am looking at. The next one is April 5th. He cashed five checks on that day. The next is one on April 7th. The next is four on April 8th. The first of those checks are made by the Atlas Equipment Company, the next one, Charles F. Tomak; the next one by the American Express Company, only \$2.00; the next one Braud Motor Sales, \$40.00. I don't know anything about those transactions that were represented by those checks. It may have been

an accommodation cashing by Mr. Flanagan after our exchange closed for the day as far as I know. The next check Mr. Flanagan cashed was on April 11th, two on that day. The next is four on April 12th. I don't remember how many of those checks he would bring in. Sometimes he would cash a check or two for three or four days in succession then skip for a week or so. I know I cashed them for Mr. Flanagan, but that is all I know about it.

I know I cashed checks for Mr. Couch for this whole period and that is all I know about it. I haven't any idea what the total amount in dollars was of all checks I cashed for Mr. Flanagan. I do not have any idea of the amount in dollars of the total cashed for Mr. Couch. I wouldn't know over this whole period of two and a half years or so how much it would add up to. I wouldn't know that Mr. Flanagan cashed lots of checks for the street car men and others around the neighborhood after we were closed up at 6:00 o'clock. None of the car men talked to me about it. They did cash their checks with me sometimes when we were open in the daytime. As to those who got their checks cashed after we had closed, I don't know anything about where they cashed them. I don't know how

long Mr. Flanagan lived out there in that neighborhood
764 how long he had been in business out there. I don't

know Mr. Flanagan's business. I knew he was from 4020. I had never been in 4020. Mr. Herbert Hillman told me it was a gambling parlor. I don't know if he has ever been in it. All I know about it is what I was told.

SAM HILLMAN, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Sam Hillman. I operate currency exchanges. The name of them is Roosevelt Agency and Loan Company, not incorporated. I operate four currency exchanges. We operate as the Roosevelt Agency and Loan Company, operating Roosevelt Currency Exchange, located at Roosevelt and Crawford, Garfield Park Currency Exchange, located at Madison and Crawford, Lawndale Currency Exchange, located at Cermak, Pulaski and Ogden Avenue; and the Crawford Currency Exchange, located at Crawford and 26th Street. I actively supervise the business of these exchanges. I see that the business

goes along, see that the boys have enough money to operate with, but not too much; set the policy for the type of checks to cash, set the general policy of the business, and so forth. The procedure for handling currency requirements is that the individual manager of the place makes his order twice a day for the money he needs and the Armored Express Company makes deliveries. The men will make an order for money at 3:00 o'clock for the following morning's delivery. He will telephone the main office, describing the amount of money he is going to need and what denominations he wants, and the main office will call the bank and order the money in that 765 denomination, deliver it by Armored Express to the branch direct from the bank. That is the procedure followed under my direction and supervision.

John Mlekovsky is the manager of the Lawndale Currency Exchange since some time in 1936. A record was kept of the currency orders of our various branch exchanges every day. When the manager would call in on the telephone and order the kind of money he wanted, we made a check, and on the back of that check we would describe that particular order, whom it was for—that is, the branch it was for, and when we remitted to the bank, it was always with that particular check, filled out on the face with the total amount of money ordered for all four branches, and that check, when it came back paid, we had it, cancelled. That record also shows the denominations of the bills ordered. It was shown in detail for all of the branches. There was always an initial in back of the amount denoting the denomination of the bills.

I have seen Government's Exhibit X-172-A, for identification, and B, C, D, and so forth, being a group of checks, before. These are checks issued by our office for currency requirements; check on the Halsted Exchange National Bank for money that we ordered from that bank. There is a record on the back of those checks as to the amount and denominations of currency orders for our various exchanges. There is such a record covering the currency delivered to the Lawndale Currency Exchange.

Referring to the reverse side of Government's Exhibit X-172-A, I can state that the Lawndale branch ordered \$50.00 worth of halves.

Mr. Thompson: If the Court please, we object to 766 this as hearsay; certainly not identified with any defendant in this case; not binding on any defendant. We have never seen these documents before.

Mr. Miller: The testimony of the previous witness, who is manager of the Lawndale branch office exchange, showed he delivered \$100 bills to Couch and Flanagan, and that they were the only customers to whom he delivered \$100 bills. He also stated the procedure whereby he obtained his daily currency shipments. These checks show currency shipments and the denominations will be set out on the back.

The Court: Objection overruled.

Referring to Government's Exhibit X-172-A, I can tell that eight \$100 bills were shipped to our Lawndale branch. Referring to the balance of these exhibits for the year 1936—Exhibit X-172-A, B, et cetera, there were five \$100 bills shipped to the Lawndale branch on December 1, 1936; there were ten on December 23, 1936; 25 on December 15, 1936; 50 on December 8, 1936; 10 on December 1, 1936; 10 on November 23, 1936; six on July 2, 1936; and five on May 7, 1936. That is all. I have seen Government's Exhibits X-173-A, for identification, a group of checks covering the year 1937, before. These are checks issued by our office to our bank, daily currency shipments for the period of one year. We sent fifty \$100 bills to our Lawndale branch on August 31, 1937; fifty on August 25, 1937; ten on August 10, 1937; ten on August 3, 1937; five on July 26, 1937; ten on July 17, 1937; ten on July 2, 1937; ten on May 25, 1937; ten on May 18, '37; ten on March 23, '37; twenty-five on March 17, '37; fifteen on March 2, '37; five on February 26, '37; twenty on February 20, '37; five on February 11, '37; twenty-five on January 27, '37; twenty-five on January 26th. That

767 is the same both times. Six on January 25, 1937; five on January 14, '37; five on January 12, '37; five on January 5, '37. All of those I have designated are orders for \$100.00 bills.

Government's Exhibit X-174, for identification, consisting of a group of checks, are checks issued by us to the Central National Bank, Chicago, for currency shipments of January 20, 1938, to and including August 20, 1938. I can, by referring to those exhibits, state what dates and in what amounts \$100 bills were shipped to our Lawndale branch. Five on August 27, 1938; five on August 22, 1938; six on July 18, 1938; forty on May 19, 1938; forty on May 14, 1938; sixty on April 23, 1938; five on March 30, '38; four on March 18, '38; and seven on January 20, 1938.

Exhibits X-172-A to L, being these cancelled checks that

I have just looked at, are part of the permanent records of our company, kept under my supervision and control. They are made in the usual and ordinary course of our business. It is customary in our business to keep such records. Exhibits X-173-A to Z, and A-1 to V-1, that I have examined, are part of the permanent records of our organization.

Mr. Thompson: We will admit the witness will answer all the qualifying questions as he has answered the previous ones.

Government's Exhibits X-174-A to Q, inclusive, are our checks. I know the defendant John Flanagan personally. He was pointed out to me. I saw him at the Lawndale Currency Exchange. I don't know to my knowledge where his place of business was. I just saw Mr. Flanagan once and I happened to be in the cage when he came in and he cashed a check and Mr. Mlekovsky said that was Mr. Flanagan. Never introduced to him. I see him in the court room (indicating the defendant Flanagan).

768 Mr. Miller: I now offer Government's Exhibits X-172-A to L, X-173-A to Z, and A-1 to V-1, and X-174-A to Q, all inclusive.

Cross-Examination by Mr. Thompson.

We had a special service arrangement with the Halsted Exchange National Bank and paid for this service on a regular fee basis. This check of February 1, 1936, which is X-172-A, for identification, is in the sum of \$9,000, made by the Roosevelt Agency and Loan Co., and on the back is an indication of currency requirements for three currency exchanges. I have a currency exchange at our main office, the Roosevelt Agency and Loan and the Garfield Park, and the Lawndale. There is one more. The aggregate of those three requisitions on there is \$9,000. The requisition for Lawndale on February 1, 1936, was fifty halves; 30 singles, 20 dimes, 400 dollars in singles, 200 dollars in fives, eight \$100 bills, a total of \$1500.00. We got eight \$100 bills that day. I don't know who got those hundred dollar bills.

Q. If I asked you the same question about all the rest of these checks, you wouldn't know who got the \$100 bills, would you?

A. I couldn't truthfully say that I knew who received that money.

I don't know who got the \$10 bills or the \$5 bills or the \$1 bills. That is true of all these checks in these three bundles. I have no idea where the money was shipped to on check X-172-B for \$2500 on the back of which is marked five \$100 bills, four fifties, ten twenties, 110 tens, and 100 fives. They might have been used at my own 769 place. It is not designated at that place. I didn't read that one off with the hundred dollar bills. I missed that one because it was not specified for the Lawndale branch. Some of these checks I passed over as I went along because there was nothing pertaining to that particular question that I was asked.

Mr. Thompson: If your Honor please, without taking time to go through all of these, we object specifically to each of these checks, they have no probative value on the single question of \$100 bills being sent to Lawndale Currency Exchange, which I assume is the only possible ground they identified this by. We object to all of them on the ground that they are hearsay as to these defendants. Object to all of them on the ground that they are immaterial, tend in no way to prove the taxable income of the defendant William R. Johnson, and in no way tend to prove any aiding or abetting by the rest of these defendants in concealing his taxable income.

Mr. Miller: I notice that some of these don't have \$100 bills on them. As to those, I can pick them out and withhold my offer of those. As to the others, with the \$100 bills designated on them, I would like to have the Court rule on the offer. The sole purpose was to show \$100 bills. How some of these other checks got in here, frankly, I can't say.

The Court: We will recess at this time until 10:00 o'clock tomorrow morning. I will take that question up with you in the morning.

770 (Whereupon the following proceedings were had in the court room, outside of the presence and hearing of the jury, to-wit:)

The Court: I have read most of this transcript of the testimony of Stuart Solomon Brown before the Grand Jury. I don't think I will let more than the first session of that testimony in. I do not allow counsel here in court to badger a witness. And while I don't think that Brown

was badgered before the Grand Jury, yet he was examined repeatedly and was interrogated about the same matter time after time and time after time by three counsel and sometimes by the grand jurors. I don't think I should allow to be done indirectly what I will not permit to be done here in open court. I think I will let you put in the first session and no more of that.

Mr. Campbell: In connection with that, Your Honor, do you intend to exclude the second time he testified, about destroying the records, to-wit, where he described in detail how he tore them up and put them in a waste paper basket and put them in the furnace?

The Court: I think that if statements of a man before a Grand Jury are going to be offered as admissions against interest on the trial the examination ought to be very much like cross examination in open court. Take up a subject, finish it; take up another subject, finish it; take up a third subject, finish that. I don't think he ought to be interrogated about the same thing day after day and day after day if it is going to be used against him as admissions against interest on the trial. Let the first day's session go in. On the rest the objection will be sustained.

Mr. Thompson: Does that mean, Your Honor, the morning and the afternoon of the first day? I don't remember just what—

771 The Court: Yes, morning and the afternoon of the first day. That ought to have been concluded that first day. Ought to take up a part of it and pursue it just as far as necessary, not range over the whole field, and then range over it again, and range over it again.

Mr. Campbell: Couldn't we postpone this at this time, Your Honor? We don't intend to read it right now, anyway, or any part of it. Then we will indicate the pages and give you a connected statement of it.

The Court: Yes.

(Whereupon the following proceedings were had in the court room, in the presence and hearing of the jury, to-wit:)

Mr. Miller: At the close of yesterday's session, an offer was made of Government's Exhibits X-172-A to L, 173-A-2, 173-A-1, 173-B-1, X-174-A to Q, and I will ask leave at this time to withdraw that offer and make a new offer of some of the exhibits.

The Court: Very well.

Mr. Miller: I offer in evidence now, GOVERNMENT'S EXHIBITS X-172-D, X-172-F, X-172-G, X-172-L, X-172-I, X-172-J, X-172-K, X-172-L; and Government's Exhibits X-173-W-1, X-173-W-2, 173-T-1, X-173-Q-1, X-173-P-1, X-173-O-1, X-173-N-1, X-173-M-1, X-173-K-1, X-173-F-1, X-173-D-1, X-173-W, X-173-V, X-173-U, X-173-T, X-173-O, X-173-R, X-173-Q, X-173-P, X-173-N, X-173-H, X-173-G, X-173-D, X-173-E, X-173-C, X-173-F; also X-174-A, X-174-C, X-174-D, X-174-E, X-174-F, X-174-H, X-174-J, X-174-L, X-174-N.

Those are the checks, if Your Honor please, which show the \$100 bills to which the witness testified as shown from his records on the dates called for.

Mr. Thompson: I have had no opportunity to examine these documents, and I must take the word of the United States Attorney that he has compared them with the record as to dates, and so on.

Relying upon that statement, subject to our verification merely because we want to check these things, we object to these documents as hearsay testimony as to all of these defendants other than Mr. Flanagan; we also object that they are hearsay even as to Mr. Flanagan, because there is no showing that he ever had any knowledge whatever of any memorandum made on the back of these checks of this corporation.

We object to their materiality to any issue in this case; they do not even tend to prove, have no probative value whatever as to the amount of taxable income of defendant William R. Johnson for the years 1936 or 1937 or 1938 or 1939; it is an inference, and by that inference deductions may be made, and inference is the only foundation for the admission of these documents.

It seems to me it meets exactly the purpose of the hearsay rule, that one accused ought not to be faced with instruments they have no possible chance of checking, never saw, have no connection with them in any way, to verify them or dispute them.

(Here follows discussion between the court and counsel.)

The Court: The objection may be overruled as to these. Read them into the record.

Mr. Miller: X-172-L, X-172-K, X-172-J, X-172-H, X-172-F, X-172-G, X-172-D.

(The said documents, so offered and received in evidence, were thereupon marked as indicated.)

773 The Court: The objection may be overruled as to these. Read the numbers into the record.

Mr. Miller: X-174-A, X-174-C, X-174-D, X-174-E, X-174-F, X-174-H, X-174-J, X-174-L, X-174-M.

(The said documents, so offered and received in evidence, were thereupon marked as indicated.)

The Court: The objection will be overruled as to these exhibits. You may read the numbers in.

Mr. Miller: X-173-V-1, X-173-W-1, X-173-T-1, X-173-Q-1, X-173-P-1, X-173-O-1, X-173-N-1, X-173-M-1, X-173-H-1, X-173-F-1, X-173-D-1, X-173-W, X-173-V, X-173-U, X-173-T, X-173-O, X-173-R, X-173-Q, X-173-P, X-173-N, X-173-H, X-173-G, X-173-F, X-173-D, X-173-E, X-173-C.

(The said documents, so offered and received in evidence, were thereupon marked as indicated.)

ADELAIDE REBMAN, being duly sworn, testified as follows:

Direct Examination by Mr. Plunkett.

I live at 4844 Concord Place. I know the defendant Jack Sommers. I believe the first time I saw him was at Ogden and Crawford but I saw him at various places. That was about five or six years ago. I never met Jack Sommers at Ogden. The Horse Shoe was the only place, the first time I saw Jack Sommers. I first met him at the Horse Shoe about three or four years ago. It was located on Kedzie Avenue near Lawrence. It was a club where they had horse racing and all the games.

I did have occasion to play games there myself. I played a card game. They called it black and red, roulette with cards. I recall having a conversation with Jack Sommers the summer of 1938. They reduced the limit from five to ten.

774 Mr. Thompson: I object to any conversations with the defendant Sommers outside of the presence of these other defendants. There is no indication this is material by the question.

The Court: Overruled.

The Witness: The limit was reduced and the dealer told me to see Mr. Sommers, and I asked him why the limit was reduced. He told me that if I wanted a higher

limit, I would have to see Mr. Johnson. I asked him where I could see him. He said I could see him there in the evening, or I could see him at the Bon-Air Country Club.

I went out to the Bon-Air Country Club to see Mr. Johnson. There was a conversation at the Bon-Air Country Club between me and defendant Johnson. I asked him about the limit. He said that he would get in touch with Mr. Sommers immediately and have the limit restored. The limit was a ten and twenty dollar limit, then they reduced it to a five and ten dollar limit. I mean I couldn't bet more than five and ten dollars at one time. I wanted it restored to ten and twenty.

I know the defendant Martigan. I don't remember where I first met him, but I think he was one of the men originally that I first saw over at Ogden and Crawford. That was the first place I went; but I saw him at the Horse-Shoe Club, at Tessville, at Lincoln Tavern, the Stables. He walked around and checked up on everything, like a floorwalker. He looked around.

The name of the place at Ogden and Crawford was the 4020 Club, I think they called it. I have seen the defendant Sommers at Tessville and the Lincoln Tavern. By Tessville I mean the Dev-Lin. That is a similar club to the Horse-Shoe that I have described. When the Horse-Shoe would be closed they would go to the Dev-Lin.

I have seen the defendant Sommers at the Harlem Stables, at the Lincoln Tavern. It was within a period of four or five years that I saw him at these different places. On the occasions I saw him at these different places he would go to the different tables and watch, and walk around and if anybody had anything to say they went up to him and talked to him.

I have had occasion to hear other persons talk to the defendant Sommers lots of times. I do recall conversations I heard between Sommers and other persons. I cannot state the approximate time at which any of these conversations took place. My best recollection is that it was when I was playing but I couldn't say just when it was. I was playing there within the last five or six years.

I overheard these conversations mostly at the Horse-Shoe Club because we were more together there. I cannot say any certain date as to any conversation that I heard at the Horse-Shoe. It was in general all the time. I can't

say when. I heard many conversations. I would say in the winter, must have been in around 1938 at the Horse-Shoe Club. All the people around the table other than myself were present. I cannot name any of them. All I know is just there was a girl named Lenie and one Millie. I do not know their other names. There are a lot of other people whose names I do not know.

Mr. Plunkett: Q. Will you state what the conversation was that you heard on that occasion?

Mr. Thompson: We object. There has been no person named we can identify.

The Court: Let us see what was said.

The Witness: Mr. Sommers was there. He was called to the table over an argument. He just told them if they had any complaints to make them to Mr. Johnson.

Mr. Thompson: Now, we move to strike this general statement "If they had any complaints they should make them to Mr. Johnson," without any identification of persons or place or time.

776 The Court: You have the place fixed and you have the time. You have the presence fixed—overruled.

Mr. Thompson: We haven't any persons, Your Honor. Anyway, we move to strike it also as hearsay as to all these defendants and certainly as to the defendant Johnson.

The Court: Denied.

Cross-Examination by Mr. Thompson.

I played at the gambling houses, the 4020 Club, at Ogden and Crawford, and the Horse-Shoe, the Dev-Lin, Tessville and the Harlem Stables.

At different times when they would be closed they would go to another one.

I played at the Horse-Shoe when it was open. It was not the one most conveniently located to my home but that was the place they had the games. When I stopped going to Ogden and Crawford they stopped the games there. They only had them going at the Horse-Shoe. That is the game I liked to play at, that is black and red. That is roulette with cards, and I played that at the Horse-Shoe. I played black jack once or twice there and I think I played roulette once.

Black and red was the only game that I played at the 4020 Club and at the Dev-Lin and the Lincoln Tavern. At

the Harlem Stables I played black and red and I think once or twice I played black jack. I played that between playing at black and red. I stopped playing black and red and played just a couple of hands of black jack. Black jack is a card game.

I played black jack at the House of Niles and at the Casino. I never was at 2108 Lawrence. I never was at Indiana Harbor. I never played out at Cicero. I was never in the D. and D. Club. I was at the Casino and played there. I was at the House of Niles. You see when 777 they were closed they took us from Irving and Cicero out to the House of Niles. When I went to Irving and Cicero they had cars there. They took the people to these places in their cars. That is the Casino on Irving Parkway. That is the one Mr. Mackay operates. When Mr. Mackay was closed up in Chicago, then he would take his players that wanted to follow him out to the House of Niles or to the Horse-Shoe. The House of Niles is where he went in the country.

I used to go from Irving and Cicero and there over to the Horse-Shoe in a car. I would go from any place to any place to play black and red.

I never saw Mr. Mackay at the House of Niles. I was only out there twice. I don't know who was out there. When I was at the House of Niles I believe the Casino was closed. I believe when I played at the Horse-Shoe the Dev-Lin was closed. When I played at the Dev-Lin the Horse-Shoe was closed.

Q. That was Mr. Jack Sommers' town place at the Horse-Shoe, and his country place at the Dev-Lin, wasn't it?

A. Well, they were all there, not only Mr. Sommers. They were all there, Mr. Hartigan, Mr. Johnson.

I mean they were all at this place. I mean I would see quite a number of these men out in these places at various times. Mr. Johnson and Mr. Sommers were not the only men walking around. Mr. Hartigan would be walking around. I mean they were walking around as though they were interested in what was going on,—the managers like.

When I played this black and red I was pretty busy. I did not look up and see what everybody was doing in the room. It is a pretty close game and requires your attention.

You can beat that game with a limit. With a larger limit you can win a little bit. You can win more when the limit is higher than you can when the limit is lower.

I progress when the limit is higher. I play a suit, a 778 club or a heart. I would start with a dollar and raise it to a dollar and a quarter, and raise it a dollar and half, a quarter each time. Then when it turned up I would stop and play another suit. That is a real sure way to win in that game. You do lose when you follow that. The idea of having a high stake in that game is you have a better chance if you have more of a limit. Then you can bet more times by this quarter adding process if they raise the limit.

I said the limit was five and ten and I wanted it ten and twenty. I mean five dollars on a suit and ten dollars on an even money. That is, you can bet on this game ten dollars if I bet even money on black or red or high or low.

If you want to try this business of mine and put up a quarter each time, then the top you can go is five dollars. So that if you start with a dollar and go by, you can bet four, eight, twelve, sixteen, seventeen times. Then you would quit.

After you play on the suit, then you can play—or if you win it before that you can play on the high and low, black and red also. The object of wanting the limit to go high was for the simple reason that when you play so much and the card did not turn up when your limit came, if you played two or three times and your limit was up, why then you lost instead of winning. If you had a high limit, you could raise a little more. You got more chances to bet; therefore, more chances to win and by the same process more chances to lose.

When they put this limit of five dollars on this game, I did not get some people to go in and play with me as my agents. I was accused of it but I did not. I never did use any agent.

I have been playing this game of black and red for five or six years. I do not think I am pretty good at it. I have won.

I played my games at different times. I played in 779 the afternoon, I played in the evening until three o'clock some times. They are open until three o'clock and I stayed there until they closed up. They barred me

from playing at the Casino at Irving and Cicero. They did not tell me I couldn't play there because I couldn't afford to play that game and lose. They barred me because I found them taking cards up to the office. I did not bar the Casino instead of the Casino barring me. I complained to Mr. Meade. He told me if I didn't like it, I knew what I could do. He would not let me in any more. That is quite a long time ago.

I did not play at the Casino after Mr. Meade barred me from playing there. I never played at the Casino after that. I went to the Horse-Shoe Club. I don't know that Reg Mackay was the manager. He ran the Casino, he bought it from Mr. Meade.

I do not know Mr. Mackay.

Ordinarily Mr. Sommers settled disputes at the Horse-Shoe. I said that if things got too hot for him they had to see Mr. Johnson. He didn't bawl that right out in the gambling room. He did not whisper it. He would come over to the table and say it, just if you have any complaints to make them to Mr. Johnson. He didn't say where Mr. Johnson maintained his Complaint Department. Mr. Johnson used to come in there a certain time of an evening anywhere from nine to twelve. I won't say every evening because I was not there every evening. He would come in quite a few evenings. He did not come in every evening that I was there. He might have come in without my seeing him.

He used to stand up by the cashier's cage and different men that worked there, that would not be working, used to go up and talk to him. They used to stand around the table and say they came to see Mr. Johnson. They would go out to talk to him, so I imagine they did. He would talk to them. I do not know whether he went into the office or not. This would be when I was playing a game, I would see all of this.

I didn't get barred at the 4020 Club. The 4020 Club took the game off. It was not there when I went in. I never went back again. They just said they were not playing. I did not go back and check up on them after that. They did not bar me from the Harlem Stables. I played out at the Harlem Stables for quite a while when the Horse-Shoe was closed. I can't say what time. Out there it was still ten and twenty. The limit was taken off there at the Horse-Shoe. The Horse-Shoe was the last place

where they had the limit and that was the last place where they reduced the limit.

They closed the clubs. I don't know when. The Harlem Stables was closed for quite a while. I couldn't say when the last time was that I was in there. I think it was about two years ago.

I haven't been in the Lincoln Tavern for three or four years. I was out there just a few times. Sometimes one or two, sometimes ten, and sometimes thirty people played this game or black and red at one time. It is a table about the size of the counsel table there. It has the regular playing cards face up under glass, black and red alternating, and you play on these cards.

You play with chips. Some places they play with cash. They play dimes and quarters, but when it is dollars they have chips. The dealer deals a deck of cards. There is two decks of cards in a steel case. And he takes three cards out of the deck and turns them face down and the fourth card he turns up and the people around the table bet on that fourth card. If they win they get paid and if they lose the dealer takes the money, if you have your money on a club and the club turns up why you win. If

you have it on anything else you don't. If a club turns 781 up and if you are playing a club you win, or if you are playing the black you win. There is a suit along with the color and you could win odds on that suit. The suits paid three to one. I had a limit of \$5 on the suits, the three to one business. Where it was straight betting then the limit was \$10. That is what Mr. Sommers tried to make. I didn't like that limit and I went out to see Mr. Johnson at the Bon-Air Country Club. That was the only time I had ever talked to him. I went out there just because Mr. Sommers said if you wanted a higher limit to go out and see Mr. Johnson. I couldn't say who was present when he told me that. I can't think of a single person who was there.

The other players wanted a higher limit. I don't know if they told him the same thing. Mr. Sommers told me to go see Mr. Johnson if I wanted to raise the limit. I don't know whether he told it to anyone else or not. I went out to Bon-Air with a friend of mine who drove me out. I don't want to tell who.

Two of his men heard me talking to Mr. Johnson. I know they were his men because they were with him all the time.

Any time I ever saw him those men were with him, and these men came up to me first and then went and got Mr. Johnson for me. One of them was a Downey, and I don't know who the other man was. I don't know what his other name was, but he was one of the Downey boys. There are five or six of them, I believe. I do not know their names. I don't know which one of the five or six it was. I would know him to see him, but I don't know what his name was. These two men were always with him when I saw him. I don't know who the other man was. I couldn't tell you now what kind of a looking fellow he was. It was a couple of years ago.

I can remember the conversation with Mr. Johnson. I remember what was said. That was what I went out 782 for. He told me he would get in touch with Mr. Sommers immediately and have the limit restored. He didn't tell me that it was none of his business, that he had nothing to do with Mr. Semmer's gambling house. He told me he would get in touch with Mr. Sommers immediately and I could go right back right then and the limit would be restored. I didn't go back that night and the next day when I went back they didn't give me the higher limit. Mr. Johnson didn't keep his word.

That is the only time I ever talked to Mr. Johnson. I never did go out to Mr. Johnson's mother's house at 4224 Hazel Avenue and try to get in to see her.

Examination by the Court.

If you bet on the black and win, it pays even money. There is two decks in the case, one hundred and four cards, and the Jack of the cards is what they call a house card, and if you have your money on the cards and a Jack comes up the house takes it all. There are eight Jacks in this. If you bet on clubs and win it pays three and your money back, three to one. If you put a quarter on you get a dollar, your quarter and seventy-five cents back.

If the Jack of clubs turns up, they take it, unless you play on the Jack. You can play on the Jack. That pays \$3.20 for a dime. Thirty-two to one. So if you are playing a club and you are progressing and you have some money on the club, you can protect it by playing the Jack, and if it turns up, why, you can get \$3.20 for every dime on the Jack.

You can play the Jack of clubs and if you win and if

the Jack of clubs turns up you get thirty-two to one. If you play the ace of clubs and win—that is any individual card pays thirty-two to one.

Redirect Examination by Mr. Plunkett.

I can relate all the circumstances about this time at 783 the Casino that I was asked about when I was told I couldn't come back there.

W. J. BECKER being duly sworn, testified as follows:

Direct Examination by Mr. Miller.

I am Assistant Secretary, State Bank and Trust Company, Evanston. I have been employed in that position for five years.

I know William Goldstein. He is a lawyer. I handled a business transaction with him in the latter part of 1937. We sold an interest that we had in a property. It was known to us as the Columbian County Club. That is the same property that is now occupied by the Bon-Air Country Club.

The sale took place in December, 1937. It was consummated in the office of our general counsel, Poppenhusen, Johnston, Thompson & Raymond. \$75,000 was paid for our interest in the Bon-Air. The earnest money of \$7500 had been paid previously and upon consummation of the sale \$67,500 was paid in the form of currency by William Goldstein, in the office that I have described. I don't distinctly recall how the first payment was made. All or a large portion of the bills were in denominations of \$100.00; at least a large portion of them were in bank wrappers, a strap that you put around a bundle of money.

There was one other party in the office at the time we were consummating the sale. He had nothing to do with this transaction.

Cross-Examination by Mr. Thompson.

Our bank, the State Bank and Trust Company, is a 784 client of your office, and this deal was consummated with one of your partners acting as the legal counsel in

the matter. There was a written contract preliminary to the consummation of this deal. I have that contract here. It was prepared in your office. The deal was consummated December 17, 1937. \$7500 earnest money was paid at the time of the execution of this contract by Mr. William Goldstein, and at the consummation of the deal the balance of \$67,500 was paid by William Goldstein. Preliminary to the preparation and execution of the contract there was correspondence by Mr. Goldstein with our bank.

(Document marked as Defendant's Exhibit J-6 for identification.)

This document that you have marked is a letter dated August 16, 1937. We got that letter in the regular course of business through the mails. It is signed by William Goldstein.

I saw Mr. Goldstein sign this contract and his signature is on there. There is no doubt in my mind who wrote that letter. Pursuant to that letter I telephoned Mr. Goldstein. I told him I was going on a vacation. I had received this letter and would telephone him when I got back from my vacation in the latter part of September. The man I talked to over the phone was William Goldstein. He is the man with whom I consummated this contract. I didn't meet any principal in this deal other than him. I didn't have any contact or dealings with any other person than Mr. William Goldstein.

MORBERT E. BIBOW called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Morbert E. Bibow. I am employed by the State Bank and Trust Company, Evanston, Illinois, 785 as Assistant Cashier. I have charge of the Real Estate Loan Department. I have had that position about five years. I know Mr. William Goldstein. When I met him he was an attorney. I met him in the office of our general counsel in the fall of 1938. I had a business transaction with him at that time. We had some property for sale. Mr. Goldstein was interested in purchasing it. The property was located in Lake County, Illinois, in the vicinity of the

Bon-Air Country Club. An agreement was made with Mr. Goldstein which was signed.

Mr. Goldstein paid \$7500 to the bank in the form of currency. The money was paid on July 28th, 1939. That transaction has not been consummated. It is still pending. We still have the \$7500.

Cross-Examination by Mr. Thompson.

I have the contract with me that was prepared in your office and that was executed on the date it bears, the 28th of July, 1939. The \$7500 earnest money was paid at the time of the execution of this contract by Mr. Goldstein. I had no correspondence with Mr. Goldstein respecting this deal we are talking about now. I am not familiar with this letter, which is marked defendant's Exhibit J-6 for identification. I have never seen this letter before. That is addressed to Mr. Becker, my associate. I read that this letter dated August 16, 1937, relates to the Columbian or Bon Air deal. Excepting William Goldstein, I know the real estate broker in this deal of July, 1939, that is all.

The deal came into the bank through the real estate broker, I believe for the purchaser. And Mr. Goldstein then followed that up by making this contract and depositing the money. I don't know anybody else in the transaction. I don't know who the principals were that Mr. Goldstein was representing, if there were other principals.

786 In one conference Mr. Goldstein said that before the deal was consummated that he had to talk to a couple of other people about this thing. He didn't mention any names.

V. W. BECKING, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller

My name is V. W. Becking. I live at 1425 Joncull Terrace. I am the cashier, since June 15, 1936, for the North Shore National Bank of Chicago, located at 1737 Howard Street, Chicago.

I have supervision of employees, cash, accounts, books and records of the bank.

I know the defendant Stuart S. Brown. I met him in July, 1938, as a customer of the bank. I see him in the court room (indicating the defendant Brown). I had business transactions with him as a customer of the bank after I met him in July, 1938. The nature of the business was a deposit to the account of the Lawrence Avenue Currency Exchange, a checking account in the bank.

I have seen Government's Exhibit X-182 for identification, before. It is a signature card pertaining to the Lawrence Avenue Currency Exchange account carried with the North Shore National Bank of Chicago. That was not opened by me personally. It is part of the permanent records of the bank, kept under my supervision and control in the usual and ordinary course of business. It is customary in our business to keep such records. The account was opened in July, '38, and was closed out some time late in September or early October of the same year.

We do keep a record of checks cashed at our bank. 787 The checks cashed and deposited at the bank are run through a recording machine for photographing, called the Recordak. After that the films are sent to the company to be developed and returned to the bank and remain in my custody. Every check that is received at the bank goes through that same procedure whether it is deposited in an account or cashed over the counter. These films are returned to us and then become a part of the permanent records of our bank.

We have a reproducer which is furnished with the original equipment and we reproduce the original film to refer to these records, to get the information off of them. That was done on a screen. It is reproduced on a screen combination.

Government's Exhibit X-183 for identification is a ledger sheet pertaining to the checking account of the Lawrence Avenue Currency Exchange, which was carried with the North Shore National Bank of Chicago. It covers July 2, 1938 to October 20, 1938. That is part of the permanent records of our bank. It is kept by us in the usual and ordinary course of our business under my supervision and control. It is usual and customary in our business to keep such records.

Government's Exhibit X-183 contains the record of the deposits and withdrawals pertaining to the account of the

Lawrence Avenue Currency Exchange for the period covered. I have seen Government's Exhibit X-181 for identification before. It is a partnership agreement given to the North Shore National Bank of Chicago in connection with the Lawrence Avenue Currency Exchange account which was opened on July 23, 1938. It is part of the permanent records of our bank. It is the usual custom in our business to have such a record as that.

Government's Exhibit X-185, A to R, inclusive, for identification, is the developed film of the records of the 788 bank for the periods covered on the box, each box.

The boxes are dated. Those films were produced here by me in response to a subpoena. I did see these films projected. It took place at our bank. I don't remember the exact date. Some time maybe in late January or early February of this year. Two Government agents were at the bank and we examined the film. Those films are part of the permanent records of the banks, kept under my supervision and control. They are kept by us in the usual and ordinary course of our business. It is customary in our business to keep such records.

I have seen Government's Exhibit X-184, A to A-1, inclusive, in a bundle of 27 sheets, before. They are deposit tickets pertaining to the checking account of the Lawrence Avenue Currency Exchange carried with the North Shore National Bank of Chicago. They are part of the permanent records of our bank, kept by us under my supervision and control.

Mr. Thompson: We admit his answer to the qualifying questions will be the same as he answered the others.

Mr. Miller: That is an admission as to Government's Exhibit X-184 for identification, 184-A to A-1.

The last time I had in my possession the box containing the cartons containing the films marked X-185-A to R, both inclusive, was August 1st of this year. The films were delivered by one of the other gentlemen in the bank, I was on my vacation at the time, to the District Attorney's office. I have not seen them since. There is no way to tell whether or not the film that is in this box, marked "Government's Exhibit X 185-D," which is dated July 30, 1938, is the film for that particular day, unless it is reproduced. I don't know whether the spool you now hold in your hand contains

the film for that day or not. There is a date on the film which will show that. That date is microscopic, so that you can't see it without a reproduction through some mechanical device. I can't tell by looking at this spool of film you hold in your hand whether it is the film that belongs in that carton or not. As far as I know, none of these films here record any checks that were handled for the Lawrence Avenue Currency Exchange unless they were reproduced. The films that I delivered did record the transactions. Each spool of film will take somewhere between six and seven thousand impressions. Each one hundred feet of film has somewhere around six or seven thousand checks on it. I have no idea how many checks of the Lawrence Avenue Currency Exchange are on any particular film. These deposit slips list the checks that were brought in by the Lawrence Avenue Currency Exchange for deposit on the days indicated on the several slips and in the amounts indicated on the slips. I don't know anything about whose checks those were or anything of the sort, except such as would be revealed by these films if they were properly exposed.

Government's Exhibit X-183, consisting of two sheets of three pages of figures, is simply a totaling of the 790 deposits made from day to day, as they appear from these deposit slips which are X-184, etc. The first deposit here was \$1,000 of currency on July 19, 1938, and that is the first item on the top of this sheet. I don't know anything about who were the customers of the Lawrence Avenue Currency Exchange or anything about its business. The account was not opened by me personally. I don't know whether Mr. Brown came in to sign the signature or whether the cards were taken out and signed. I know that the signature on here is the signature of Mr. Brown by reason of later transactions.

I do not know the signature of Bernice Downey. All I know about that is that it is on this card.

Redirect Examination by Mr. Miller.

We have what we call a teller's sheet, which will record the amounts of the checks cashed at our bank, no other information about it.

Mr. Miller: We offer at this time Government's Exhibits X-182, 183, 184-A to A-1, inclusive, X-181, and X-185-A to R, inclusive; and there is a Recordak projecting

machine here for the purpose of examining Government's Exhibits X-185-A to R, inclusive, the films.

Mr. Thompson: We challenge the competency of Mr. Miller to testify as to whether this machine will properly reproduce these films.

We object to Exhibit X-181 and Exhibit X-182 as hearsay as to all defendants except the defendant Brown, and as immaterial to any issue in this case, and in no way tending to prove the taxable income of the defendant William R. Johnson.

We object to the block of deposit slips under X-184 as being hearsay as to all defendants excepting the defendant Brown, as being immaterial as to all defendants, as tending in no way to prove the taxable income of the defendant 791 Johnson, and having no probative force as to whether or not there was any evasion of payment of proper tax on the taxable income of the defendant Johnson, and any activity on the part of any of these defendants in pursuance of any conspiracy to evade such payment.

We object to Exhibit 183, which consists of three pages of figures, on the same grounds that we objected to X-184.

Now, as to this boxful of cartons, which contains what appears to be some film that have been developed and replaced on spools, which stand under X-185-A to R, both inclusive, we object on the ground that they are unintelligible, that they are not presented in a manner that can be seen by the jury in the presence of any of these defendants. These defendants have a Constitutional right to be faced by all witnesses, the production of all evidence in a conscious manner. And that all of these exhibits are immaterial as to all of these defendants on the grounds stated as to the previous exhibit, and that they are hearsay as to all defendants except possibly the defendant Brown.

The Court: Exhibit X-182 may be received. Objections will be overruled.

(Said exhibit, so offered and received in evidence, was thereupon marked GOVERNMENT'S EXHIBIT X-182.)

Mr. Miller: Due to lack of time, it has just been explained to me, there are twenty-seven slips. The first one was marked "184-A" and the last one was marked "184-A-1," it being understood that the balance of them would be 184-B, C, D, E," et cetera.

The Court: They may be so marked and they may be received. The objection will be overruled. Let them be marked. They are not marked now.

Mr. Miller: Yes, sir.

792 (Said documents, so offered and received in evidence, were thereupon marked as Government's Exhibits as above indicated.)

The Court: Government's Exhibit X-181 may be received, and the objections thereto may be overruled.

(Said exhibit, so offered and received in evidence, was thereupon marked GOVERNMENT'S EXHIBIT X-181.)

The Court: Government's Exhibit X-183, for identification, may be received, and objections thereto may be overruled.

(Said document, so offered and received in evidence, was thereupon marked GOVERNMENT'S EXHIBIT X-183.)

Mr. Miller: X-185 is in that offer, if your Honor please. Those are the films. Do you want to see them—185-A to R, inclusive.

The Court: Did you folks in the bank read these exhibits, 185?

The Witness: Reproduced them on a screen we have, furnished by the company for that purpose, and we have permanent equipment with the bank at all times to use when we want it.

The Court: Is this one of them, over here? (Indicating.)

The Witness: That is the type of equipment, right there.

The Court: Come over and look at it. Is that the sort of machine you used to examine the films?

The Witness: Yes, sir.

The Court: The films may be received, and the objections thereto may be overruled.

(Said documents, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS 185-A to R, inclusive.)

793 J. W. McGINNIS, being duly sworn, testified as follows:

Direct Examination by Mr. E. Riley Campbell.

I live at Deerfield, Illinois. I have been cashier of the Deerfield State Bank for eleven years. We have four employees besides myself. That was true over the period '38 to '39. During that period Mr. William Lutz was the

teller. Miss Ruth Johnson was engaged in the general work in the loan department, principally. I was the superior officer in charge of the bank. There was no one else above me in authority there.

Government's Exhibits X-208, X-209-A to X-209-E-1, inclusive; X-210-A and X-211, are part of the records of my bank, kept under my supervision and control. It was in the usual course of business to keep such records as that. The entries appearing thereon, with the exception of X-211, were made at or about the time of the transaction to which they refer. Those Exhibits, for identification, except the last one, X-211, are deposit slips of money deposited in the bank.

X-208 was the signature card of the depositor, The Lightning Construction Company, not incorporated, by Roy H. Love and John W. Geary.

Exhibits 209-A to 209-E-1, inclusive, are deposit tickets of money deposited in the bank on that day in the account of the Lightning Construction Corporation.

X-210-A is a ledger sheet pertaining to the same account. It was the regular custom and practice of the bank to keep correspondence pertaining to the accounts of its customers.

Exhibit 211 is a letter enclosing some checks to be deposited. By looking at this exhibit I can tell that the account was open on December 13, 1938. That is the date of the signature card. The first deposit may not have been on that day. The first deposit appears on December 19, 1938; the last deposit on July 31, 1939.

The ledger sheet 210-A shows a deposit and checks drawn against the account, and the balance from day to day. Mr. William Lutz must have taken nearly all of these deposits at the window of the bank. That would be the regular course of procedure at the bank. The only way I can recall taking in any of the deposits is by the deposit slip bearing my writing. July 27th bears my writing. That is Exhibit X-209-D. I took that deposit in by mail, five checks. That is the only deposit ticket bearing notations by myself or indicating that I took the deposit. The only thing I can think of that would be unusual about that account was that nearly all deposits were currency alone. That was a little bit unusual for our bank. In our bank it does not require a lot of currency to operate. Currency coming in in large amounts usually never goes into the vault. These deposits were always sent by Brinks', Inc.

I am not so familiar with the denominations of the deposits in currency shown in that account. I am more familiar with the amounts.

The currency items deposited for that account were always sent out by Brinks, Inc., on the day it was received, or the morning following, to our correspondent, the Northern Trust Company of Chicago. I don't think there were checks drawn against that account as soon as that currency was deposited. I just remember that occasionally there were large bills deposited for that account. By unusually large bills I mean larger than we were accustomed to receiving. One hundred dollar bills and up are unusual in our bank. One hundred and five hundred dollar bills and thousand dollar bills. We had some of those in those deposits. I am not so familiar with the number of them, but we did have those large bills.

795 Mr. Thompson: We move to strike all the testimony as immaterial and tending in no way to prove the income of the defendant Johnson, and is hearsay to every defendant in this case.

The Court: Overruled.

Mr. Campbell: I would like leave to withdraw the originals and substitute photostats for those, if in that time they are offered in evidence.

Mr. Thompson: No objection to that request, but there is an objection to the exhibits.

WILLIAM FRANK LUTZ, being duly sworn, testified as follows:

Direct Examination by Mr. Campbell.

I live at North Brook, Illinois. I am a school teacher at North Brook High School. Prior to that I worked in the Deerfield State Bank.

I know that Government's Exhibits 209-A to 209-E-1 are deposit slips in the Deerfield State Bank, where I was employed. I had something to do with the taking of the deposits of some of them. I did not have anything to do with taking that particular deposit, #209-A. I don't know if I had anything to do with taking the deposit 209-B. I can't tell by looking at each individual deposit what deposit I took, because there are no identifying marks on the deposit

ticket. The form of the deposit for the most part was currency. To my recollection bills were deposited from \$100.00 bills to \$1000.00 dollar bills. That would apply, as a class, to the deposits in odd figures. The majority of the one-hundred dollar, five hundred and one thousand dollar bills were new bills. They were wrapped in the ordinary currency strap. When the depositor cashed a check drawn 796 against that account they were usually in small denominations. Sometimes silver was given also. I did not, in the course of the conduct of this business in the bank, become acquainted with the depositor. I never met either one of them.

Cross-Examination by Mr. Thompson.

I do not know the exact amount that was ever deposited at one time. I don't know the exact amount of the thousand dollar bills either. I can't tell you how many five hundred dollar bills. There never was a block of thousand dollar bills with a regular currency tape around it. I don't know if there ever was a block of five hundred dollar bills brought in with a currency tape around it. There was a block of hundred dollar bills brought in with a currency tape around it.

A small bank very seldom runs across any hundred dollar bills. It is entirely up to the person who makes such a shipment as to how many hundred dollar bills are in a package. This tape that I am talking about is the regular printed tape, but they run in different denominations, going from fifty dollars all the way up to two thousand dollars. When we bundled up some one dollar bills in the regular course of business there would ordinarily be one hundred in a tape. They have a regular printed tape with a dollar sign, one and two naughts on it. They put it around this package of hundred dollar bills and toss it to one side.

There is two hundred and fifty dollars of five dollar bills in a package. You put fifty five-dollar bills into a package and put a two hundred and fifty dollar tape around it.

You put fifty ten dollar bills in a package. That would be five hundred dollars.

We would put twenty-five twenty dollar bills in a package and put a band around them. There would be five hundred dollars printed on it. I don't know how many hundred

dollar bills I would put in a package because our bill
797 straps only had denominations of five hundred dollars.

When we wrapped any more money than five hundred dollars we wrote the amount on the bill strap—that is, we turned the bill strap over and wrote the amount on the bill strap.

We usually made up shipments of two thousand dollars. That was our limit with the Brinks Express. If we had that many hundred dollar bills that is how many we would ship. We would put twenty under a band to make a two thousand dollar bundle if we had that many. Twenty bills would not be over a half an inch thick.

I never had the experience of putting five hundred dollar bills up under a band. A five hundred dollar bill is no thicker than a one dollar bill, and no bigger in size. All the bills are the same, of the new currency, up to one thousand dollars. The largest currency deposit made on that bunch of slips there is ten thousand dollars. I don't know if I took that deposit. There is no identification. I have no reason to put my handwriting on these deposit tickets. There is no one else's handwriting that I know on the ten thousand dollar deposit tickets. There is one of \$3,800.00 with my figures on this particular deposit slip, so I can identify that one. I don't know what denomination those deposits were made in. The ticket shows that it was currency. I don't know whether that was three one thousand dollar bills, one five hundred dollar bill and three one hundred dollar bills. I don't recollect the deposit at all. I don't recollect any particular deposit that came in that can tell me how many bills were in that deposit.

Q. Well, why do you say then that these deposits were made in thousand dollar bills, five hundred dollar bills and one hundred dollar bills?

A. We took the deposits as a whole. I took the deposits as a whole, as it came in.

It was not suggested to me at any time that I say that
798 there was some thousand dollar bills in these deposits.

If you asked me a question what I thought, that is what I would tell you, what my recollection of those particular deposits would be.

If a one thousand dollar bill came in to the Deerfield Bank I would probably remember that forever. I would say there were three or four one thousand dollar bills deposited in that account. Those three or four were depos-

ited one at a time. I can't tell you definitely at what time.

I don't know how many five hundred dollar bills were deposited in that account over the whole period of time. I never did take a five hundred dollar bill and deposit it myself. I do not know how many one hundred dollar bills were put through that account. I did take a deposit which had a hundred dollar bill in it. I don't know how many.

I did say that when checks were cashed at our bank and money was paid out it was usually in small bills or silver. I would say one check a week was cashed at the bank. I can point out the person who cashed the check if I saw him. He was not pointed out to me by agent Sommers as I came into the door of the Courthouse. He didn't point out anyone to me. None of the defendants were pointed out to me by anybody. I absolutely don't know any of the defendants. I wouldn't know the name of the man who cashed the check out there. If I would see him I could point him out. I have not looked for him.

I think Exhibit X-210-A would show the number of checks cashed there. These ledger sheets, under the listing of "checks in detail"—some of these checks were cashed over the counter, some were cleared through the clearing house. Our affiliate bank is the Northern Trust Company. Some of the checks came from the Federal Reserve, that is the clearing checks. I can not tell which check was cashed over the counter.

799 Mr. Campbell: At this time, may it please the Court,

I offer in evidence the exhibit for identification, about which the last two witnesses were questioned, with the exception of 211, a piece of correspondence attached to the file.

Mr. Thompson: We object to X-208, which seems to be a signature card. There has been no proof of the signatures. All the proof is that this is a piece of paper in the bank as a part of its files and records. We object to that exhibit and all the rest of the exhibits as immaterial to any issue in this case and tending in no way to prove the taxable income of the defendant Johnson, and having no probative force to any of the other issues of the indictment and that it is hearsay as to each and every defendant in this case.

The Court: I think I will sustain that first objection.

Mr. Campbell: The identification of the signature? Is the balance of it received?

The Court: No, I think you ought to identify those signatures in order to make the account relevant.

Mr. Campbell: I will withhold the offer pending the connection.

HELEN KOOP, being duly sworn, testified as follows:

Direct Examination by Mr. Plunkett.

I live at 5542 West Leland Avenue. I am employed by the Albany Park Safe Deposit Vault Company, 3424 Lawrence Avenue. My employer at that place is Mr. William Goldstein. I have worked there four years. He was not my employer when I was first there. He became my employer July 20, 1937. The Lawrence Avenue Currency Exchange change was opened in that building. It opened July of 1938, and remained open until September 30th, 1939.

I knew the defendant, Stuart Solomon Brown, and Miss Downey, in connection with the Lawrence Avenue Currency Exchange. I had a conversation with Mr. Brown at the time this place first opened up. He came in and told me that he was the gentleman that Mr. Goldstein sent out to look at the premises in connection with opening a currency exchange.

We spoke about the currency exchange on Kimball Avenue, which is a block away from the bank building. I am the vault custodian at that building. The building is approximately as long as this room, and the vault is at the rear of the building. I sat back at the vault. It is my duty to let customers in and out of the vault that have safety deposit boxes there.

Henry Brandt is employed at that bank. He does the janitor work there and is also a special police officer. There were no other tenants of the building except this Lawrence Avenue Currency Exchange that I refer to. It is a one-story building and there is a balcony in the rear. It is an empty bank building. The building is on the North Side of Lawrence Avenue, at the corner of Bernard Street, and, as I say, it is about as long as this room and probably as wide, and there are tellers' cages on the East as well as the West side of the building, and Mr. Brown's cage is on the West side of the building. I was able to see, from where I sat, that he was in the cage. I could see the persons who

were coming in and out of the building. I did observe customers in the Lawrence Avenue Currency Exchange coming in and out of the building during the time it was open. I did see people coming in and out.

I remember Mr. Sommers coming in to do business with the Lawrence Avenue Currency Exchange (indicating the defendant Sommers). I saw him in the currency exchange almost every day during the entire period that it was 801 open. I should say it was probably right after lunch time, maybe one o'clock or so. I don't know what he was doing when he came into the currency exchange. He did not come up and talk to me. He was in Mr. Brown's cage—he was talking with him.

I remember seeing the gray haired gentleman with the glasses there, Mr. Creighton, in that Lawrence Avenue Currency Exchange (indicating the defendant Creighton). I did not see him very often—I don't believe it was more than four or five times that I remember. I can't say definitely whether it was in the morning or afternoon.

I saw the defendant Johnson in the currency exchange. I saw him there on two occasions. On the two occasions I saw him he was talking with Mr. Brown. I believe the first occasion was early in the summer of 1939. I would say he was talking to Mr. Brown about five or ten minutes at the most. The second occasion was also in the summer of '39. He was also talking to Mr. Brown on that occasion. I did not observe how long he stood there talking to him. I was leaving the building when he was still there.

I might know the binders that were kept by the Lawrence Avenue Currency Exchange, but I don't know what the records were. I did observe that there were records kept. They were kept in the book vault on the East side of the building at night. That is on the main floor, on the opposite side of Mr. Brown's cage. There was what you call a book vault over there and that is where they are kept.

I recall the day the currency exchange closed—it was on a Saturday, September 30, 1939, about 1:30, I believe. The books and records of the currency exchange were placed in the book vault at that time. They stayed in that book vault about a week or ten days. After that they were removed to the basement. I did at that time have a conversation with the defendant Brown. I asked Mr. Brown whether he 802 wouldn't move the records to the basement, as someone else had spoke about opening up another currency exchange, and after that conversation the books were re-

moved to the basement, by Mr. Brown and Miss Downey, who was Mr. Brown's partner. She was at the currency exchange during the period of time it was open. I believe she waited on the customers that came in for money orders, and cashed checks and, I believe, she worked on the books.

I know where the books and records were removed, to the basement, from the book vault on the first floor. We had a storage room down there, also a book vault, and part of them were placed in a cupboard on the lower shelf and the others were placed in file cabinets that the vault company stored dead records in. That was about ten days after the exchange had closed. They were down in the basement probably another ten or fifteen days after the ten-day period I referred to.

I had occasion to go in the basement I have described during that period of time. I saw packages wrapped in brown paper, newspaper, and there was a large cardboard box about that long (indicating) in that room in the basement. There were canceled money orders in the box. I had occasion to look at the money orders. I had a telephone call from the Peoples Gas Light & Coke and they were inquiring about a check that had been purchased from Mr. Brown, and they wanted information immediately, so I went down and I looked in the box where the checks were. The books and records remained down there about ten or fifteen days after they were first brought down there. At the end of that time they were taken out by Miss Downey, the same Miss Downey I have been testifying about, that was in this exchange with Mr. Brown. A young lady was with her when those were taken out—I believe it was her sister. Mr. Brandt helped carry them out.

Government's Exhibit X-195 is the box that I was looking in down in the basement. The contents of the box are 803 the ones I was looking at at that time.

I had occasion to see the defendant Brown after the closing of this currency exchange on the 30th of September. He came in every day for about a week or ten days after they closed. There was not any definite time when he usually came in. It was usually in the morning. He would stay probably a half hour—maybe three quarters of an hour. I never observed him tearing up any papers or any ledger sheets during the period, that I know of.

I think I did see Mr. Brown after the books were brought down in the basement from the vault on the first floor. I don't think he came in every day after the first ten days

because he would come in to get his mail and after that there wasn't much of it.

Cross-Examination by Mr. Thompson.

I have been working at this bank building since 1936. There are no other employees there at the present time. The janitor, Mr. Brandt, was there—just the two of us. The bank that was in the building, I believe, closed in 1931—I don't know—I was not employed there. I came there long after the bank was closed. I came to the Albany Park Bank Building with Mr. Carter Harrison, Jr., Receiver of the Jefferson Park Bank. At first I was an employee of the Receiver of the Jefferson Park Bank. Mr. Harrison received the Albany Park Receivership, and when the Jefferson Park Bank Building was sold he moved to the Albany Park Building and made that his office.

I got this job as custodian of the vault in July of 1937. Mr. Goldstein hired me for the job after the Albany Park Bank Building was sold, but when I came to the build-
804 ing with Mr. Harrison I immediately took that job.

When Mr. Goldstein became the spokesman for the building I went to work for him, and have been working for him ever since.

I pay my salary out of the income. I account to Mr. Goldstein for my services.

This bank building was not empty the entire time until this exchange came in, which Mr. Brown established. The Receiver's Office was in there.

The part of the building used in banking facilities was empty around one year before Mr. Brown came there and put in this exchange. Mr. Brown had told me that Mr. Goldstein had sent him down there to see me about putting in an exchange, and I made arrangements with him for rent, and Mr. Brown paid \$50.00 each month as rent for this exchange. He only occupied a small space in one corner of the floor—the cages. He worked back of a teller's cage and when the customers came in to get service they would walk up to the cage just like any other bank building and transact their business through the grating.

I said that on one occasion along in the early part of summer, 1939, I saw Mr. Johnson come in there and walk up to the cage and talk to Mr. Brown. My recollection is that Mr. Brown was there and he talked with Mr. Brown. I don't know what they talked about. I don't know any

transaction that took place there. I should say I was about twenty-five or thirty feet away. He stayed a few minutes—I don't know exactly how long. Nothing unusual occurred that I noticed.

I didn't know who Mr. Johnson was then. He did not attract my attention. I didn't know it was Mr. Johnson until after I had seen his picture in the papers. That was when I found out it was he. I am quite sure that the picture that was in the paper was the picture of the man I had seen in the exchange a year ago, exchanging a few remarks with Mr. Brown. This same man that I saw 805 come in there and speak to Mr. Brown one day came in on another occasion. He was at Mr. Brown's window for a few minutes and I was closing up the vault, when I saw him still standing there when I walked out of the building. He walked up to Mr. Brown's cage. He was there a minute or so and I went out. I didn't pay any attention to what they were doing. I saw no transaction take place between them. I didn't, at that time, know who Mr. Johnson was. I didn't know him by name. I didn't know him at all except that it was some man that I thought I had seen in there a few months before—a few weeks before, and about a year after that I saw a picture in the paper, and I said "There is the fellow I saw in that currency exchange". Nobody suggested to me that that picture was the same person that I had seen in the currency exchange.

The books were placed in the big vault on the bank floor every night—I imagine they put them in there again when the exchange closed. I saw them carry them from the cage to the other side of the building. I didn't follow them to see whether they went into the big vault but I just assumed they were being put in there again. When I had a chance to rent this space to another currency exchange I asked them to remove them from the book vault, and they did. I didn't see them do that, but I heard the wrapping paper and I knew that they were wrapping up what they took out of the file. I didn't watch them take them things out of the vault. I just asked Mr. Brown whether he would remove them.

When the currency exchange closed, whatever they used in the cage, whether it was books or money or anything else, was taken out of the cage and carried across to the other side of the building and placed in that book vault.

Now what they placed in there I don't know—I didn't watch them. I didn't go into that cage after they left. 806 Mr. Brandt cleaned up after they left. I didn't see him remove any books. A couple of weeks later I had a chance to rent the space, and I asked them to remove whatever they had out of these files, and they came down there and worked at that job and I assumed they moved whatever was there. I know it was empty when they got away from there. They went in the basement. What they had wrapped and what was in the boxes they took into the storage room in the basement. I have a cupboard down there that I keep my stationery in for the vault company and they use the lower shelf of that cupboard, which is about that square (indicating). They had whatever it was on that shelf. And then I have boxes down there with entry tickets, dead files, and they had put the rest of their things on top of these boxes. This material that they took downstairs was stored in the open storage room down in the basement. Anybody that was down there had access to these books and papers. I went down there to look at some of these papers when this inquiry came from the Commonwealth Edison Company. I looked into this box here that has been exhibited to me by the United States Attorney. I didn't make any more careful inspection of its contents at that time than I did when I identified it here. I didn't have time to look at anything else but in that box because the man was waiting on the wire. I looked through there to find this particular document that I was looking for. I remember that box, and it has the money orders from the Lawrence Avenue Currency Exchange in it. I think this is the box because it was that size and shape—I believe Mr. Brown only had one box like that. I think this is the box. I don't remember whether it was fastened or not. I had to get the check.

I saw the Lawrence Avenue Currency Exchange money orders. That box is down there in the basement, along with some other boxes and papers. I didn't look in this particular box because I knew that was where the 807 money orders were. It was the only box down there like that.

I saw Mr. Brown file money orders in that box, so I knew where to go. If I remember correctly, I know some packages were wrapped in brown paper and I think there were also packages wrapped in newspaper. I don't know how many packages.

I said that a couple of weeks later I saw Miss Downey come in and take out some papers. It was probably a little over three weeks before Miss Downey came in and carried away some of these papers. I don't know how many packages or books she carried out. I knew she took some because she passed my desk and had something under her arm. I don't know what she had—I didn't pay any attention. I know she walked past my desk and I knew she was carrying something—I don't know what she was carrying. I just know that she came in and got something out of the basement. What she was carrying I don't know. That was some three weeks after the exchange was closed. That was a week or so after I had told them to remove the boxes from the safe down to the open basement storage room. I didn't talk to Mr. Goldstein anything about all that business that I remember. I didn't take the matter up with him at all.

It is hard to say how many people came in and out of this exchange every day while it was operating there because I have people coming into the vault. I have an average of thirty-five to forty a day coming into the vault. I don't know how many came into the currency exchange—I wouldn't know exactly. I don't know whether there would be as many as one hundred or more that came in and had checks cashed every day. I don't know definitely. I don't think there were that many. A lot of people who came into the vault also stopped at Mr. Brown's window and did business with him.

I saw Mr. Creighton come in and go out. I remember him. I think I said about a half a dozen times in this whole period of time. He didn't stay very long when he 808 came in. I shouldn't say that he was in there more than five minutes.

I saw Mr. Sommers in there a whole lot. I don't remember the faces of anybody else I saw in there. I don't recall seeing Mr. Hartigan in there. I don't remember him unless these men look different with their hats off.

I don't know if Mr. Johnson took his hat off when he came in. I wouldn't remember whether he had his hat on or off when he was talking with Mr. Brown at the window.

Q. Did he have his hat on or his hat off when you saw his picture in the paper?

A. Well, he had his hat partly on and partly off.

Q. Sort of nonchalantly tossed over one ear; is that right?

(No audible answer.)

Q. What about it, Miss Koop?

A. I think in the newspaper he had a hat on, if I remember correctly.

Q. You think in his picture he had a hat on, and in the vault he had his hat on or off?

A. I don't remember.

I could tell from his picture in the newspaper that his hair was not dark—it was either gray or very light. I couldn't tell the color of his eyes from the newspaper clipping.

Q. Could you tell how tall a man he was from the picture you saw in the newspaper?

A. Well, the description told me that.

Q. Oh, there was a description in this newspaper too, was there?

A. Sure.

Q. It said, "Bill Johnson, six feet, two inches tall, four feet wide, and so thick"; is that right?

A. That is close.

809 H. M. ENGSTROM, being duly sworn, testified as follows:

Direct Examination by Mr. Miller.

I have been vice president of the Gary-Wheaton Bank, Wheaton, Illinois, for eleven years. I am acting manager of the institution.

I have met William Goldstein once. He is a lawyer. I had a business transaction with him. The nature of that transaction was an escrow, deed and money escrow. It involved a deposit of funds with us—also a deed, which we were instructed, according to the escrow agreement, to record, and have the title company furnish letter of opinion. It was covering the sale of real estate in DuPage County.

I was paid \$16,950.00 in the form of currency by William Goldstein in pursuance to that escrow agreement. To the best of my recollection the denominations of the bills were tens and twenties. That is about all I can remember of the denominations.

I have seen Government's Exhibit E-41, for identification. That is a deed and money escrow agreement, exe-

cuted in my presence by William Goldstein. That is a part of the permanent records of our bank, kept under my supervision and control. It is kept by us in the usual and ordinary course of our business. It is customary in our business to keep a record of that sort.

Mr. Plunkett: I will offer Government's Exhibit E-41.

Mr. Thompson: My only objection is it is immaterial, and it does not tend in any way to prove the taxable income of the defendant Johnson, and as to all other defendants, purely hearsay.

810 The Court: Overruled. It may be received.

(Which said document so offered and received in evidence was marked GOVERNMENT'S EXHIBIT E-41.)

(No cross-examination.)

(Witness excused.)

HENRY BRANDT, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Plunkett.

My name is Henry Brandt. I live at 5206 West Ainslie Street. I am employed by Mr. Goldstein in the Albany Park Safe Deposit Vault Company. I have been working there about two and a half years as a special police officer and janitor. I was working there while the Lawrence Avenue Currency Exchange was located there. Mr. Brown and Miss Downey worked in the exchange.

I see Mr. Brown in the courtroom.

My hours at this bank building, while the currency exchange was located there, was from nine to five thirty. I was there until the currency exchange closed every night. I was on duty out there every day during the period this currency exchange was open. I went out to the corner to get something for lunch and bring it in and have lunch inside. I had occasion to observe the persons who were coming into this currency exchange while it was open.

I see persons in the courtroom that I saw at that currency exchange. I saw that gentleman there, with the gray suit, (indicating the defendant Wait). I didn't see him in that currency exchange very often; my best judgment is about five times. I recall the first time I saw him there.

The front door was locked at the time, and I let him
811 in at the request of Mr. Brown. After he came in he
went over to Mr. Brown's cage. He stayed not more
than five minutes on that occasion. I didn't see anything
transpire while he was standing there—I was at the door.
I don't know what happened on these other occasions that
he came in. He went over and talked to Mr. Brown when
he came in. Mr. Brown told me Mr. Wait's name one time.

Q. Do you recall if he said anything else about him
except his name?

Mr. Thompson: We object to this as hearsay, this
conversation, as to all the other defendants.

The Court: It is admissible as against Brown. Go
ahead. It might be admissible against the others. I can't
tell. It may be received.

The Witness: I lock the door at four o'clock. When
he came to the door I was supposed to let him in.

I didn't at any other time have a conversation with
Mr. Brown respecting that man.

I saw that gentleman over there in the last row in that
Lawrence Avenue Currency Exchange (indicating the de-
fendant Hartigan). I saw him there about eight or ten
times, in the course of the time this currency exchange was
open.

I saw Mr. Sommers there (indicating the defendant
Sommers). I saw him in the currency exchange 'most
every day. He came in in the afternoon. Usually he went
out with a bag of money. Prior to the time that the
defendant Sommers came in there in the afternoon the
armored service had made deliveries to the exchange.

I saw that gentleman with the gray hair, the second at
the last row, at the currency exchange (indicating the de-
fendant Johnson). I saw him there about twice. Once
he came in to the front of Mr. Brown's cage and I seen
him once in Mr. Brown's cage. I don't know which time
I saw him in Mr. Brown's cage. When I saw him in the
cage he was talking to Mr. Brown. When I say in the
cage I mean behind the grill work on the outside.

812 There is an entrance on the front to the side of Mr.
Brown's cage to get in there. On this occasion that
I saw him behind the cage he was there about five minutes,
and on the other occasion when he was standing outside
Mr. Brown's cage he was there about five minutes.

Miss Downey brought checks into the currency exchange

in the morning. That was every morning. She brought them in a payroll envelope. She ran checks off on an adding machine when she brought them in in the morning and she entered them in a book. After that the armored service man picked them up when he brought the money.

There was an occasion when Miss Downey did not come to the office in the morning. On that morning I had other duties to perform than the ordinary ones. I went down to the Horse Shoe Restaurant, at the request of Mr. Brown. He gave me a receipt to go to the Horse Shoe Restaurant and told me to give the receipt to the girl and she would give me a little package. I went to the Horse Shoe Restaurant and gave the young lady a receipt and picked up the package and went back to the bank building. I gave the package to Mr. Brown. I didn't see him open it. I know what was in the package—it was checks.

I did observe books and records around the currency exchange while I was working there, a ledger book, a book where money orders were written in, and a big book where they entered the checks in, and there were two little black books. Those two little black books were about five inches by six inches. I have seen use being made of those two little black books. Miss Downey used to check off different numbers in that book, according to the big one and check them into the little book from the big book. She got this information she was putting into the little book from the big book. The big book I am referring to is where they had the checks typewritten in.

813 Government's Exhibit X-198 appears to be the check record that I have been describing. After Miss Downey had taken the entries out of the book and put them into the black book she took both black books home occasionally.

I am acquainted with where these records were kept at night. They were kept in the book vault on the opposite side of Mr. Brown's cage, in the back, on the other side of the building. It was not part of my duties to carry those things over at night, but I carried them in every night. I carried the ledger book, the money order book and that book that they wrote the checks in, and two little file trays in there every night.

After the currency exchange closed they put the records in the book vault. I saw the money order book again after that. After the books had been put in the book vault I did see them come out of that book vault, about ten or

fifteen days after that. Miss Downey and Mr. Brown were there when these books were taken out of the book vault. They were taken down into the book vaults in the basement. They were wrapped up in newspaper and some brown paper that was around the building before they were taken down to the vault in the basement. After they were taken down and stored in the room downstairs they were there about a week or ten days. After that Miss Downey and her sister came in to take them out. I did have a part in taking them out of the basement. I carried them out to the car. I made three trips between the basement and the car. I remember the particular packages that I carried from the basement to the car. I carried an apple box that was packed up and a cardboard box and the money order file box.

I have seen Government's Exhibit X-195 before, at the Lawrence Avenue Currency Exchange. The young ladies carried them up from the basement, and I carried it out from the first floor to the car. It was the Downey family's car.

I know what Government's Exhibit X-196 is. It is 814 the book where they wrote money orders into. I was present when the armored car brought money to the currency exchange. After the money came into the exchange Mr. Brown would count it and have it picked up. He opened the bag and dumped it on the counter, and counted the nickels and dimes and the paper money. If it was new paper money he would wrinkle it up and stack it up in a pile again. It was put in several piles. After the money was put in piles the gentlemen came in to pick it up. The gentlemen that came to pick up the money were Mr. Sommers and the gentleman by the name of Fred—I don't know who this gentleman by the name of Fred is—I don't know where he came from. I don't know Fred Gitzen. I have seen a thousand dollar bill in that currency exchange. Mr. Brown showed it to me. I had occasion to see one hundred dollar bills in the currency exchange. I saw them whenever Mr. Brown showed them to me. He didn't show them to me very often.

The safety deposit vault out there closed at four o'clock. They closed at the same time while this currency exchange was in operation. I stayed until five-thirty, until the currency exchange closed. During that hour and a half I stayed at Mr. Brown's cage. During the day I spent my

time outside the safety deposit vault. We have a desk outside the vault there and I sat there.

In my duties as janitor of the building I had occasion to empty the waste baskets and generally clean up. I took care of the furnace. I did not, in the course of the time that I was taking care of the furnace, open the furnace door and find a lot of papers in there unburned. No one else took care of the furnace except myself.

I never did observe the defendant Brown tearing up large sheets of paper or any part of these records. I did, during the time I was working there at this exchange, have occasion to see the defendant Brown and Miss 815 Downey make out receipts. I saw them make out receipts in the afternoon. Miss Downey used to take them with her. I had seen one of those receipts.

816

Cross-Examination by Mr. Thompson.

I commenced working for this building down there in 1935 or '36—I don't know the exact year. Mr. William Goldstein became my boss after the building was sold—I believe that was in 1937 or '38. My duties were the same after I worked under Mr. Goldstein as they were under my prior boss. Prior to that I had worked for the agent of the Receiver of the building. As janitor of this building I got in in the morning, cleaned up, mopped the lobby, swept behind the cages, and at 9:00 o'clock I would start working at the vault.

I arrived in the morning anywhere from six to eight-thirty. In the winter time I had to come down early to make a fire. The building was heated by a hand-fired furnace. I had to get down there and fire up of a morning. This was a one-story and basement, typical bank building—no other business could be conducted in the way the building was constructed, excepting bank service. The main floor room was the usual two-story high room. I don't know what size this banking room was on the first floor, but the building is 50 by 125 feet.

The banking room on the first floor occupied all of the first floor. The vaults were in the rear of the building. It was part of the 125 foot depth—about 25 feet in the rear. The bank room, exclusive of the thickness of the wall, was approximately 50 and a hundred feet deep. This bank faced Lawrence Avenue. The address was 3424 Lawrence

Avenue. It is on the North side of Lawrence Avenue. When you go inside of this building cages are on the right-hand side and cages are on the left-hand side, and they extend all the way along the wall clear back to the vault.

In the front of the building you have the usual open space where the president of the bank or cashier used to sit, about 20 feet back from the front wall of the building to where the super structure over the counters would begin. The open space in the front part of the building was about 20 feet from the front to the back. It would be about 10 feet from the wall to the railing. There was one of these on each side of the banking floor, on each side of the door. As you go into the front of this building the currency exchange was on the left-hand side. The currency exchange occupied one side. They had a lot of room to rattle around in.

Nobody occupied this open office at the front. It was not used for anything—Just a desk standing there. Mr. Brown did sit in there in a chair and visit. It was used for that purpose—social purposes at least. He didn't frequently have people coming in there and sitting down in this office and talking to him. On occasions he did, men and women, whatever customers or persons he had there, either business, social or otherwise. I never heard any of the conferences held there. There was nothing in this office space but a desk and some chairs. It was used on these occasions of conference.

Immediately behind this office was the first cage. You got into that cage from the lobby of the banking space through a swing door that was in the middle of this office space that permitted you to walk from the lobby space into this office space, and then you turned right and walked into this cage. Then you came forward to your window. This window was the typical, usual bank service window that allows you to look out of it and do the work, with just a grillwork up above, and there was just a little space underneath to do business under. The Lawrence Avenue Currency Exchange occupied this first cage immediately at the south of the office space. Mr. Brown and Miss Downey of the Lawrence Avenue Currency Exchange occupied that. There was only one cage on this side of the building. It took in about seven cages—I mean they cut all those cages up into one. All the partitions were taken out and one large cage was made. They

had seven windows. What used to be seven cages became one cage. The first two windows of the seven former windows were used as the service windows for the currency exchange.

When they were both working Mr. Brown was at the first window and Miss Downey was at the second. If she was there alone then she moved up to Mr. Brown's window—I observed that. At times I was at Mr. Brown's cage and at times I was back by the file. The only times I was at the currency exchange cage was when they had those large amounts of money coming in and they were getting ready to put it in the vault or something, or after our vaults closed then I went up to serve the currency exchange in guarding the money while they were making this transfer of funds.

The vault was open from nine to four, continuously, with no closing during the noon hour.

Only two people were employed by this vault company. Mr. Goldstein is president of the vault company. I don't know who the secretary is. The vault company operates the set of vaults in the rear of the building. You entered the vault space through a grilled door. This partition that separates the bank lobby space from the vault space is an open grill partition all the way across, of stainless steel bars. The door enters into this space in the middle of the building. The door is about eight feet. We both open the steel door that goes into the vault space in the morning. By that I mean I am on the inside when Miss Koop comes in and I open the door. There is no lock on it—just a little snap that runs into a little slot. We do not lock that iron grate door. I opened the vault door before Miss Koop came down. It had a combination. It was six or seven feet between the steel partition which separated the lobby S19 from the vault space to the vault door itself. This six or seven foot space is about twelve or fifteen feet long, because the cages run on both sides. The cages run clear back to the vault. Miss Koop's desk was in this space of seven feet wide. She was in there back of this first grill work and in front of the vault door. We have a counter on one side of that grill and she has her desk right next to the vault, up against the frame of the vault, close to the door.

We have little rooms where the people go in there to examine the contents of their boxes. Her desk faces those little rooms, so that she is facing the side of the building and the front of the building is at her left.

I had two chairs in that space, one at the counter and one at the desk at times. I sat back in this space there with Miss Koop and when a customer would come in to use the vault either I or Miss Koop came back to open the vault for them. I took them back into the vault space and then opened the individual box that the customer had. There were times that both Miss Koop and I were back in this vault space together. There were thirty-five or forty customers came in there a day to use these vault boxes. There were more than that often. The average amount of customers was between forty and fifty. We had between 1700 and 2000 box renters when we had this currency exchange and 40 or 50 would come in and out each day on an average, and I and Miss Koop served these people without other assistants. I was back in the vault serving the people about a third of my time. The rest of the time I was outside as a guard. I wore a uniform, with a badge. I was dressed like a policeman.

I served in the triple capacity of janitor, guard and assistant custodian of the vaults. I knew what Miss Downey and Mr. Brown were doing all the time. I knew what Miss Downey was writing with her typewriter all the time. I saw all the list of checks she made and all the entries 820 she made in her books and that sort of thing. I saw all the change Mr. Brown made and bills he counted, and all that sort of thing, and I was back in the cage at the currency exchange. That would be any time of the day. I spent about a third of my time back of the cages in the currency exchange while it was operating there. I was standing around and sitting down. I could see everybody that came in and if Miss Koop got too busy I went back to the vault.

The occasion of my spending a third of my time back inside this currency exchange was on account of Mr. Brown's money. As long as I was police officer it was part of my duties, not to count the money, but keep my eyes open. I didn't count Mr. Brown's money. I didn't say I did. I just sat around back of this cage. They had a chair back there for me to sit in.

Q. Were you invited back in the currency exchange?

A. Nobody ever chased me out.

Miss Downey was not busy all of the time keeping her books and running her typewriter. I saw everything she wrote in the books. I could not see what was going on be-

hind the cages when I was sitting in the space back by the vault. I could see all that was going on in front of them.

It was in the afternoon when I saw Mr. Johnson come in and go behind the cage of the currency exchange, anywhere in between three and four o'clock—I don't remember the day—I don't remember the month. It was in '38.

During the time Mr. Brown was running his currency exchange there was one of the days I saw Mr. Johnson come in and go behind the cage. He stayed about five minutes—he didn't sit down—he stood up. He didn't to anything while he was there—just talked to Mr. Brown. Miss Downey was there. I was sitting at the counter at the vault,

between the space that is in this space between this 821 grating and the front of the vault, in my usual and customary guard space. Nobody else was in there at that time. I didn't know Mr. Johnson at that time. I know him as Mr. Johnson—I saw him in the paper months back from now. I never saw Mr. Johnson's picture in the paper until he was indicted. That was just a few months ago, along in 1940, that I saw Mr. Johnson's picture in the paper. I saw him in this vault out there in this cage in 1938, two years before. As soon as I saw this picture in the paper in 1940 I said "There is the fellow I saw in the currency exchange back in 1938," right off the bat.

HIBBERT A. DENNING, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

I live in Burlington, Wisconsin. I am employed by the Northern Trust Company approximately twelve years. I am now a special paying teller and have been for the past six and a half years, for the Northern Trust Company,—since about 1934. My duties as a special paying teller are to see that there is a sufficient supply of money on hand to meet all legitimate demands that customers may make upon us. The other tellers are allowed a maximum of currency and in order to obtain that maximum if they are short they buy from me and if they exceed their maximum they turn that excess over to me. Any transactions at their window that they are unable to handle themselves, they may refer them to me.

All requests from country banks for currency are filled by me.

The deposits and the cashing of the checks of the brokers and bond houses, and all the checks coming through the 822 clearings each day for \$10,000 or over, the signatures on there must be approved by me before final payment is made. I think that covers it.

I have known the defendant Jack Sommers for approximately five years. I met him in the course of my duties at the Northern Trust Company. I would transact banking business with defendant Sommers for approximately three times a month for six months out of the year. That would be over the period '36, '37 and '38, and part of '39, I believe, not more, I don't think, than the first two or three months, four months possibly, of 1939. He brought me old currency and exchanged it for new. He would bring it in wrapped in paper, in one package, and then on opening it would be strapped in packages of \$500.00. The denominations of those bills were tens and 5s, possibly a sprinkling of twenties, not many—they were old bills. There would be an average of about ten \$500.00 bundles to a bundle. Mr. Sommers would take mostly new fives and possibly a package of twenties. There would be three thousand in fives, two thousand in twenties, and if he didn't take twenties he might take a few hundred dollar bills. It averaged mostly three thousand fives and averaged two thousand hundreds if he didn't take twenties. About one-third of the time over the period that I have testified to there would be an exchange of hundred dollar bills and two-thirds of the times twenties. That is over the period of '36, '37 and '38, and two or three months in '39. There is not any charge made for a transaction of this that I know of—at least I didn't make any.

Q. Now, what amount in dollars would that business that you have described of Sommers with the Northern Trust Company, what would that amount to in the year 1936?

Mr. Thompson: We object to that, the amount of these exchanges of currency, as far back as 1936, especially.

The Court: Your best recollection, if you have one.
823 The Witness: Approximately one hundred thousand dollars and approximately one hundred thousand for the year 1937 and one hundred thousand for 1938. These transactions amounted to, in dollars for three or four

months that I have described in the year 1939 for Sommers, in the bank, amounted to approximately forty thousand dollars.

There was no permanent record kept by me of these transactions that I have described in exchange of that currency. The money was in the form I have described, as handed to me, and I delivered to Sommers the quantities I have described. I do not recall that in the currency that Sommers brought in that he ever brought in any new hundred dollar bills.

Mr. Thompson: It appearing there is no evidence connecting the defendant Johnson at all with these transactions, we move to strike it on the ground it is immaterial, does not tend in any way to show the taxable income of the defendant Johnson, or even the taxable income of anybody.

The Court: Denied.

Cross-Examination by Mr. Thompson.

These amounts that I was mentioning are approximations of the aggregate of the transactions. Mr. Sommers would come in with five thousand dollars of worth of currency and he would exchange that currency for an equal amount of new currency, with the exception of hundred dollar bills. If he got any hundreds it was immaterial if they were new or old. He would usually take out three thousand in fives when he came in with the five thousand dollars. The other two thousand he would sometimes take out in just new twenties. On the occasion when he didn't take it out in twenties then I remember that he took it out in hundreds. About two-thirds of the time he would take out that other two thousand in twenties and about one-third of the time he would take it out in hundreds. He came in approximately about three times a month about six months of the year. That would be about eighteen visits a year on the average. That is my recollection for 1936 and my recollection is approximately the same in 1937. I didn't fix it by any memorandum that I have—or any thing—I just think back over the period and it seems to me it was about three times a month about six months a year. That would be about ninety thousand dollars. I don't know whether it was the \$5,000 bank roll handled eighteen times, or whether it was eighteen five thousand dollar bank rolls—I don't know anything about that. Mr.

Sommers didn't explain to me why he was making these changes. The fives and twenties that Mr. Sommers received from me would be new money.

I have never shot any craps. I don't know how they deal money on the table.

ARTHUR GEORGE BAIER, called as a witness in behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Miller.

My name is Arthur George Baier. I am paying and receiving teller at the North Shore National Bank about four years. My duties as paying and receiving teller of the North Shore Bank is to take in deposits and pay out currency.

I know the defendant, Stuart Solomon Brown, whom I see in the courtroom (indicating the defendant Brown). I have known him just as a customer of the bank—July 21, 1938, until August 16, 1938. During that period I saw him about every day.

I took in deposits and also gave cash back, on checks, in my transactions for the bank with defendant Brown. That would happen every day. I gave him currency every day, in bills, mostly in one hundred dollar denominations. It would be very hard to say what would be the amount of 825 currency I gave him every day in these denominations—it ran in different amounts.

During the entire period from July 20, 1938, to August 16, I gave him approximately \$85,000 in currency. Most of it was in hundred dollar bills. Mr. Brown gave me a check in exchange for the currency I have delivered to him, drawn on his own account, the Lawrence Avenue Currency Exchange.

Cross-Examination by Mr. Thompson.

I handled these transactions with Mr. Brown just as a customer of the bank. I took in deposits myself and paid cash out. On these deposits there were checks that he deposited. Then he gave me a check and I gave him cash back, whatever he wanted. Each transaction was a deposit, and then a draft on the balance of that deposit. It was not

exactly the amount of that deposit. He did not draw out the amount he put in each time. That varied. His checks were different amounts. As far as I recall he wouldn't take out the money represented by the block of checks he would bring in. He made deposits and took out cash—I don't recall whether the same amount or not.

I recall the size of the bills, but I can't say how much he took out each time. He took out mostly one hundred dollar bills. He very seldom took any change for this currency exchange down there. He would take quarters, nickels, dimes—that is all I can recall. It may be that he took some halves—I don't recall very well. I don't recall that he took any pennies. I never was down at this currency exchange. I don't know anything about the kind of business he operated down there. We had one or two other currency exchange accounts around that time. The name of one is Rogers Park Currency Exchange, located on North Clark Street. I didn't handle that account. I never cashed any of their checks. They had the money picked up mostly by Brinks Express. The Rogers Park Currency Exchange would come in in the morning and order what they want from the discount teller and note teller. I don't know anything about that transaction of taking out different varieties of currency and cash.

We had the Harold E. Vetter & Company Currency Exchange, located on Broadway—I don't know what address—I very seldom handled that account. They took out currency, cash, in various denominations, but theirs was mostly fives and tens and singles, single dollar bills. They took out different denominations of silver, which they needed.

I have no memorandum of the transactions with Mr. Brown. I am trusting entirely to my recollection. The first day I had a transaction with Mr. Brown was in July sometime—I can't recall right now. I took in his deposit and gave him cash back. I don't recall the amount of the deposit. I don't recall the amount of the cash I gave him back. I don't recall how many one hundred dollar bills I gave him that day—I don't recall how many tens.

Q. Do you recall any day that you had a transaction with Mr. Brown that you can tell us something about?

A. Well, just as a customer of the bank, he would come in to make a deposit and ask for me—

Q. Name one day that you remember.

(No answer.)

Q. Do you remember any day, the amount of his deposit?

A. No, I don't.

Q. Do you remember any day that you gave him as many as ten \$100 bills?

(No answer.)

Q. Do you, Mr. Baier?

A. I don't recall, off-hand.

827 Mr. Thompson: We move to strike the testimony of this witness, your Honor, as altogether immaterial; tending in no way to prove the taxable income of the defendant Johnson, or any of the other issues in this case.

The Court: Motion denied.

828 GUS L. NELSON, being duly sworn, testified as follows:

Direct Examination by Mr. Miller.

I have been vice-president of the Central National Bank of Chicago since December, 1936. I am in charge of the special service department that handles our currency exchange division, primarily; collections, transfers.

I have known the defendant Stuart Solomon Brown since the Lawrence Avenue Currency Exchange account was opened with us, in 1938.

Government's Exhibit X-178, for identification, consisting of ten sheets bound together, are our customer ledger sheets, on the Lawrence Avenue Currency Exchange, and reflect the deposits made, checks paid, and other debits charged to the account.

The period of time covered by those ledger sheets is July 14, 1938 to September 25,—no; November 17, 1939. These ledger sheets reflect the deposits made, checks paid, and other debits charged to the account. Those sheets are a part of the permanent records of our bank, kept under my supervision and control in the usual and ordinary course of our business. It is customary in our business to keep such records.

Government's Exhibit X-179, for identification, are analysis cards which reflect the activity of the account month by month. It reflects the average balance, the float, the number of checks drawn, number of deposits made, number of checks deposited, both local and out of town, and the

amount of currency withdrawn, and the number of money orders paid. That is part of the permanent records of our bank, kept under my supervision and control.

829 Mr. Thompson: We admit the rest of the qualifying questions.

Mr. Miller: The admission of counsel has reference to Government's Exhibit No. X-179.

The Witness: Government's Exhibit, X-180, for identification, consisting of two batches of tickets are deposit slips that accompanied the deposits from time to time. They cover the account of the Lawrence Avenue Currency Exchange and are part of the permanent records of our bank, kept in the usual and ordinary course of our business.

Mr. Thompson: We admit the rest of the qualifying questions.

Mr. Miller: The admission of counsel for the defense has reference to Government's Exhibit X-180 for identification.

At this time, I will offer Government's Exhibits X-178 and X-179.

Cross-Examination by Mr. Thompson.

The first transaction appears to be July 14, 1938. That was the opening of the account. One thousand dollars was the amount deposited when this account was opened. The deposit slip would reveal whether that was a currency deposit or check deposit.

The next transaction was on August 15, 1938, a deposit of \$8,623.79, and a debit of ten cents. I can't tell without referring to the deposit slip whether that deposit totaled checks. I don't know what the debit 10¢ is for. It is possible it was exchange on an out of town check, something like that.

One month and one day intervened between the opening of the account and the first transaction in the account. I didn't handle those transactions personally. Some tellers and other employees under me handled the transactions. I know nothing about the relations between the exchange and my bank except what my records show.

830 Mr. Thompson: We object to the documents, Government's Exhibit X-178, which seems to consist of ten sheets of paper, with figures on both sides of the ten sheets, on the ground that it is altogether immaterial; tends in no way to prove the taxable income of the defendant Johnson;

has no probative value as to any of the other defendants and the defendant Johnson as alleged in the indictment; it is hearsay as to each and every defendant in this case, except, possibly, the defendant Brown, and as to the defendant Brown, it is immaterial to any issue in this case.

The Court: The objection may be overruled, and the exhibit may be received.

(Whereupon said document, marked GOVERNMENT'S EXHIBIT NO. X-178 was received in evidence.)

Mr. Thompson: As to the other exhibit, which is Government's Exhibit X-179, consisting of two sheets with figures and words and symbols on both sides, this is immaterial to any issue in this case; certainly it tends in no way to prove the taxable income of the defendant Johnson, or any other issues presented by the indictment, and it seems to me to be hearsay as to every defendant, certainly as to all except Brown.

It appears, your Honor, to be an analysis sheet of some kind. We have had no connection with it and have no source of information concerning it.

The Court: Does this show that you conducted this business as a loss?

A. The total amount is the amount charged to the account as service, and showed an analysis loss, and that loss is charged to the account.

The Court: Objection overruled. It may be received.

(Whereupon said document, marked GOVERNMENT'S EXHIBIT X-179, was received in evidence.)

831 The Witness: The defendant Brown didn't see the document, Government's Exhibit, X-179; however, monthly copies of that were mailed to him, containing the same information on a different form. That is our permanent record. Monthly copies of analysis were mailed to the currency exchange. It is possible that no copy was made out for the month of July, 1938, inasmuch as the account was inactive. The information contained on this card for the month of August was mailed the early part of September to the Lawrence Avenue Currency Exchange. It would be the regular printed form containing all the information that appears on this card. It shows the amount of the cost to our bank of handling the account, which was charged to the account. This is what amounts to the statement for services for handling this account for the Lawrence Avenue Currency Exchange.

At the time the account was opened we discussed our

per item cost and this account corresponds to what was agreed upon for the per item cost for the service to be rendered. What this finally adds up to is what the Lawrence Avenue Currency Exchange paid us for services during the period they were served by us.

Mr. Thompson: We renew our objection, your Honor.

The Court: Overruled.

PATRICK FLANAGAN, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 1815 Touhy Avenue. I am a special payer at the Central National Bank. My duties as special payer are the shipping of currency and silver to currency exchanges 832 and supplying the tellers in our own bank with currency and silver.

I have known the defendant Brown since July, 1938. I met him in the course of my duties in the Central National Bank. He would call in his order for currency and silver. The order would be completed, sealed, and the armored car men would pick it up and deliver it. I would prepare that order. That was part of my duties. Brown would call me at night for delivery of currency the day after. Sometimes I would talk with Mr. Brown and sometimes a lady, about those arrangements—I don't know who the lady was.

Brown called me practically every day and placed orders for currency for the period from July, '38 to the time the account closed. That would be sometime in the fall of '39.

A large portion of the orders Brown placed for currency would be large bills.

Q. How much of a total amount of currency would he order when he called you up with reference to placing—

A. One to ten thousand.

Mr. Thompson: We object to all this, your Honor, as hearsay, as to all other defendants, and as immaterial.

The Court: Overruled.

The Witness: The average amount that he would order during this period was from three to five thousand a day. A very large portion of the currency he ordered would be hundred dollar bills, fifty dollar bills, some twenties, fives, and singles. On an average of from three to five

thousand dollars a day of the portion that he ordered was in hundred dollar bills.

I would order the currency sent out on order from the Federal Reserve Bank, Chicago. Mr. Brown would usually call me the day before, and if he needed an excessive amount of large bills we would have to order those from the Federal Reserve, in excess of our usual order. I

would have to order those large bills, because we
833 were not in the habit of using so many large bills during the day. We generally took enough to suffice our needs.

Mr. Thompson: I move to strike the testimony as immaterial, being in no way connected with the defendant Johnson, and tending in no way to prove the taxable income of the defendant Johnson, and hearsay as to the other defendants, except possibly the defendant Brown.

The Court: Motion denied.

Mr. Miller: I would like at this time to read Government's Exhibit X-179 to the jury, if your Honor please.

The Court: What is that?

Mr. Miller: It is an account analysis record of the Lawrence Avenue Currency Exchange account.

The Court: All right.

Mr. Miller: Account analysis record of the Lawrence Avenue Currency Exchange. I am reading from Government's Exhibit X-179, the Lawrence Avenue Currency Exchange, 3424 West Lawrence Avenue.

In the left, first column on the left in—

The Court: Pardon me. That is going to be wholly unintelligible to the jury.

Mr. Thompson: Certainly it is.

The Court: I am going to make this ruling. This is received in evidence, and reading thereof is waived, unless I hear an objection at the moment. I hear no objection. The reading is waived. Either counsel may have

leave to refer to the document and to read such por-
834 tions of it as he may wish.

Mr. Hurley: If the Court please, we have here certain exhibits that were identified but have not been received in evidence. I wish now to offer those exhibits. They are E-54, E-62, E-61, E-59, E-57, E-58 and E-60. These are the reports of the auditing firm of Horwath & Horwath, which were identified by Mr. Shaw, and were not offered at that time, and I now wish to offer them, the reports of the Bon-Air Catering Company, the originals

of which were sent to the company at the time the audit was made.

Mr. Thompson: If the Court please, I assume they are a duplication of the books that are in evidence. These seem to be an auditing of the accounts as they are described. The proof, as I recall it, is that they were mailed to Mr. Waite, the president of the corporation.

We object to the documents on the ground there is no showing that any of the other defendants ever saw these documents. There is certainly no showing that any defendant who was not in some way connected with this corporation ever saw the documents.

It is hearsay as to all of the defendants, except possibly the defendant Wait, to whom the documents were addressed. It is altogether immaterial to any issue in this case. These documents do not prove or tend to prove

the taxable income of the defendant Johnson. The s35 defendant Johnson is not bound by the books of the

Bon Air Catering Company, much less by the auditor's audit of those books, unless it is proven that the defendant Johnson had his attention called to the accounts and the books and had knowledge of them. They are all immaterial and hearsay. No proper foundation has been laid for them.

Mr. Hurley: The evidence, as your Honor will recall, is that the defendant Johnson himself ordered certain entries made on these books. That is how they are competent, among other reasons.

The Court: The objections will be overruled. The exhibits may be received and the reading thereof may be waived at this time. Counsel may have the opportunity of referring to or reading all or any part of them in the argument.

(Said exhibits, so offered and received in evidence, were thereupon marked **GOVERNMENT'S EXHIBITS E-54, E-57, E-58, E-59, E-60, E-61 and E-62.**)

(Whereupon the following proceedings were had in the courtroom, outside the presence and the hearing of the Jury, to-wit:)

The Court: Now, before you start, I am going to adhere to the ruling which I indicated the other day respecting Exhibit O-211. Mr. Brown was interrogated before the Grand Jury on, as I recall, several different days. I am going to let you put in the first day's testimony. That covers these pages number from 381 to 429, and those

pages numbered 504 to 604. I am going to sustain the objection of counsel for the defendant to the remaining pages, which are numbered 817 to 862, 1523 to 1577, and 1933 to 1986, a total of 152 pages. Now, the reasons for my sustaining that objection I indicated to you yesterday. The pages which I have admitted cover 148 pages. I am sustaining objection to 153. Now, then, counsel for the defendant can start on that basis if he has something 836 to say.

(Said exhibit, so offered and received in evidence, was thereupon marked GOVERNMENT'S EXHIBIT O-211.)

(The following proceedings were thereupon had in the presence and hearing of the jury:)

Mr. Hurley: At this time, if the Court please I desire to read from Government's Exhibit O-211, being the Grand Jury testimony of Stuart Solomon Brown.

Mr. Thompson: If the Court please, we object to the reading of this testimony on the ground that it is incompetent; it is hearsay as to all of the rest of the defendants; it is a mere recital of a past offense, not in any conversation or act of the defendant which can be in any way binding on the other defendants.

The Court: It is Grand Jury testimony?

Mr. Hurley: That is right, your Honor.

The Court: I have admitted it only as against defendant Stuart Solomon Brown, and not against any of the other defendants.

Thereupon Mr. Hurley read to the jury the Government's Exhibit O-211, being that portion of the testimony of Stuart Solomon Brown before the Grand Jury that was admitted in evidence as follows:

837 Mr. Hurley: (Reading:)

"STUART SOLOMON BROWN called as a witness by the Grand Jury, having been first duly sworn by the Foreman to testify the truth, the whole truth and nothing but the truth was examined and testified as follows:

Examination by Mr. Campbell.

Q. Will you state your name?

A. Stuart Solomon Brown.

Q. And you sometimes sign your name as S. Brown, do you not?

A. Most of the time.

Q. Where were you born?

A. Buffalo, New York.

Q. How long ago?

A. Almost forty-nine years ago, forty-eight years ago.

Q. At this point in your testimony, although under no legal obligations so to do, I nevertheless am going to advise you that it is your privilege, as each question 838 is put to you, to claim your Constitutional right against self-incrimination. That, however, is a privilege to be claimed by you as each question is put, do you understand that?

A. Yes, sir.

Q. Where do you live, Mr. Brown?

A. My residence is 4200 Hazel avenue.

Q. Hazel avenue?

A. Yes, sir.

Q. Chicago, Illinois?

A. That is right.

Q. Do you live in an apartment?

A. Yes.

Q. How many rooms?

A. Three.

Q. Are you married or single?

A. Married.

Q. Do you have any children?

A. Not of my own.

Q. You live at 4200 Hazel avenue?

A. That is right.

Q. Do you know who lives at 4224 Hazel avenue?

A. No, sir.

Q. If anyone?

839 A. No, sir, I do not.

Q. Over the last ten years, beginning January 1, 1930, please detail exactly what you have done.

A. In 1930 I was with the Ogden National Bank. I was cashier. The bank was located at the corner of Ogden and Crawford avenue.

Q. And how long did you continue in that position?

A. I was with the Ogden National Bank from 1927 to 1931.

Q. And what happened, if anything?

A. I was out of work for two years.

Q. That takes you up to 1933?

A. That is right.

Q. Then what?

A. Then I secured a position with the Federal Deposit Insurance Corporation as Assistant Examiner.

Q. How long did you continue in that position?

A. Until May or June, 1937.

Q. Beginning in May or June, 1937, what did you next do?

A. I was out of work from 1937 to 1938.

Q. What time in 1938?

840 A. I should say until I went into this Currency Exchange business about July, July 20th.

Q. July 20th, 1938, you went into the Currency Exchange business?

A. That is right.

Q. How far was that currency exchange business located from the Ogden National Bank, where you formerly worked?

A. Oh, I would say about six or seven miles.

Q. About six or seven miles?

A. Yes, sir.

Q. Do you know a man by the name of James A. Hartigan?

A. Yes, sir.

Q. How long have you known him?

A. About twelve years.

Q. Twelve years?

A. Yes, let us see, twelve years, that is right.

Q. Where did you first meet James A. Hartigan?

A. At the Ogden National Bank.

Q. What were the circumstances under which you met him?

A. His usual coming in there, seeing him going
841 into the teller's cage and transacting whatever business he did at that time.

Q. And this continued over a period of years, did it?

A. Up until 1931.

Q. You saw James A. Hartigan frequently at your bank during that period?

A. I would not say very frequently, but he was there maybe once or twice during the day, or maybe once a day, something like that. I do not just remember.

Q. At any rate, it was during that period of time that you became acquainted with Mr. Hartigan?

A. That is right.

Q. Do you know Jack Sommers?

A. Yes, sir.

Q. How long have you known Jack Sommers?

A. I have known him only since I was in business in the Currency Exchange.

Q. That would be July, 1938?

A. That is right.

Q. And A. J. Creighton, sometimes called Andrew Creighton, do you know him?

A. Yes, sir.

842 Q. How long have you known him?

A. About the same time.

Q. Did you know him prior to the opening of the currency exchange?

A. Never, I never knew either one of them, sir.

Q. And Orrie Alexander, do you know him?

A. Who?

Q. Orrie Alexander?

A. No, I don't know him.

Q. George Turner?

A. I don't know him, either.

Q. Anton Moody?

A. I would not know them unless they came in there and brought checks in there. I would not remember their names. I do not know them personally, if I seen them on the street I would not know them, to tell you the truth.

Q. That is an answer to the question, very well.

A. Thank you.

Q. Do you know John M. Flanagan?

A. I don't know him, I have heard of him, but I don't know him.

Q. Tell us what you have heard about him.

A. Weil, I have heard that he was—had some gambling connections on the West Side.

843 Q. Go ahead.

A. That is all.

Q. What kind of connections?

A. I don't know.

Q. Who told you that he had connections on the West Side?

A. Mr. Hartigan.

Q. What did he say?

A. I used to get checks, I did not get checks from him, I have tried to get checks from him.

Q. I did not hear the last answer.

A. I said I tried to get checks from him, but they did not have any for us.

Q. What connection was there between Mr. Flanagan and Mr. Hartigan?

A. I could not say, I just guess they knew each other.

Q. How did Hartigan come into the situation so far as Flanagan was concerned?

A. Flanagan never came into my place, I do not remember seeing him once in my place.

Q. But you heard about John Flanagan?

A. Yes.

Q. Through Jimmie Hartigan?

844 A. That is right.

Q. What did Hartigan say about Flanagan?

A. Nothing, he never spoke about him.

Q. He must have said something, you say you heard something about Flanagan from him.

A. I knew that he was handling checks there and I was getting checks from Sommers and Creighton, and I thought that I could get some from him, but I did not get any from him.

Q. Why did you select Flanagan as a source for getting checks?

A. Probably because Hartigan mentioned his name to me and I asked him for some checks.

Q. Flanagan was running a gambling house the same as Hartigan?

A. I suppose he was.

Q. And that is why you solicited their business?

A. I did not solicit their business.

Q. You knew they had checks to be cashed and you solicited checks from them?

A. But I did not get any from them.

Q. But whether you did or not, you knew what Flanagan's business was?

A. I said I just heard about it.

Q. And you heard it from a reliable source?

845 A. I heard it from Hartigan.

Q. And that was a reliable source so far as you were concerned, wasn't it?

A. Yes, sir.

Q. E. H. Wait, commonly known as Ed Wait, do you know him?

A. I do not know him, sir.

Q. Do you know a man by the name of William R. Johnson?

A. Yes.

Q. Commonly known as Bill Johnson?

A. Yes.

Q. How long have you known him?

A. Twelve years.

Q. Twelve years?

A. Yes.

Q. What were the circumstances under which you first met him?

A. Coming into the bank there.

Q. Where?

A. At the Ogden National Bank at Crawford and Ogden.

Q. Was he a customer of the bank?

A. At that time I think he had a small account.

846 Q. And you became acquainted with him?

A. Only in that manner.

Q. And in that fashion you became acquainted with Johnson?

A. Yes, I knew he had a gambling place and I think he was interested in the dog track out there.

Q. What gambling place did you know that he had?

A. The one on Ogden avenue.

Q. What was the address?

A. I do not know the address, sir.

Q. Was it 4020 Ogden avenue?

A. Something like that.

847 Q. And you knew that he had a dog track at one time?

A. Yes.

Q. Did you?

A. Yes.

Q. Where was that dog track located?

A. 26th and Cicero.

Q. What was the name of it?

A. I don't know the name of it, I don't know what the name of it was at that time.

Q. What was the name of that Kennel Club?

A. I could not tell you.

Q. Was he the only one you got acquainted with in connection with the dog track enterprise?

A. That is all, and I only knew him casually.

Q. I beg your pardon?

A. That is all, and I only knew him casually.

Q. You attended the dog track?

A. Never, never in my life. I never attended any gambling place in my life.

Q. You merely serviced them?

A. Just like anybody else would in the banking business.

Q. While you were cashier of the Ogden National Bank, you learned that Mr. Johnson operated a dog track?

A. That is right.

Q. Mr. William R. Skidmore, do you know him?

A. I never saw him in my life.

Q. Did you ever have any business transactions with him?

A. Never.

Q. Ever have any business transactions with anyone connected with Mr. Skidmore?

A. Not that I know of.

Q. Not that you know of?

A. No.

Q. Now, at this point go ahead and tell the Grand Jury in your own words about the Currency Exchange.

A. What do you mean?

Q. To which you referred.

A. How I got the idea about it and so on, is that what you mean? How I got into it?

Q. That is a comprehensive question, and you can say just as much or as little as you care to. I am allowing you to be your own pilot, for a minute.

A. I was out of work for over a year, I don't know whether it was in May or June, 1938, I was coming ing downtown and I was on State Street, I don't know just exactly where, and I met Jimmie Hartigan. I have known him, but I had not seen Jim for years, and he asked me what I was doing and I told him I was not working, just a mere conversation, but I said I had an idea of something I could do, but I did not have enough money to go into it, to go into that business. Well, he listened to my conversation and he said, "Well, I have got to go somewhere, suppose you meet me some time or come out and see me." I said, "Where can I see you?" He said, "Come on out to the Harlem Stables." I said, "All right; when can I come out?" He said, "Come out tomorrow or the next day."

Well, I went out there and I propositioned him, I was met at the door, he met me in the ante-room, there is a sort of a little room off the entrance, and he said, well, and I told him of my thinging of going into the currency exchange business because I could not get a job. Everywhere, every place I went, being over thirty-five years of age, they don't want you, even the United States Government, I can prove that, too. So, what was I going to do,

I had to go in some business, after all I was married, 850 so he said come back again. I said, "When can I come back?" And he said, "In another week or so."

I came out there again and asked for him and saw him and he seemed to be interested. I said, "Now, you won't lose your money, you can trust me." He invested a couple of thousand dollars in the business.

I lived in Albany Park for about twelve years and I told him about a spot out there, I told him the Albany Park Bank Building was empty and there was a good chance for my renting that place reasonable. He said—I told him the fixtures were in there, and that it would not cost me much to start out. He said it might go good. He said "Go into it and see what you want to do and if I can help you, all right, I will."

Q. Go right ahead.

A. Well, then we started into the business. That is all.

Q. Go ahead and tell us about the business.

A. What do you want me to tell you?

Q. All about it.

A. I entered into the currency exchange business 851 and opened up an account.

Q. Go ahead.

A. He did say "I can get you some business," and I said "all right, if you can throw that business my way," which I knew he could, it would be a great help to me to get started in that location. Knowing all of the people in that neighborhood in addition to that business, I tried to make a go out of it, but it was not possible, the moment that business was cut off I was cut off.

Q. What particular business are you referring to that was cut off?

A. The business that Mr. Hartigan sent in to me.

Q. What was it?

A. The checks from Summers, Craighton and Kelly.

Q. You are a banker, aren't you?

A. Yes, sir.

Q. And as a banker you generally know the type of business in which at least your important clients or customers are engaged, don't you?

A. I didn't get what you mean, sir.

Q. Read the question.

(Question read.)

A. Well, that is misleading.

852 Q. In what respect?

A. Well, I would not know what business they are engaged in other than cashing the checks. Anyone can come in and cash checks, individuals or anyone at all.

Q. Now, I want you to tell me more about that business, which Mr. Hartigan sent to you. I want you to state the type of that business, and I want you to talk without my crowding you with questions, go ahead.

A. He introduced me to this Mr. Creighton, Mr. Sommers and Mr. Kelly, and told them to bring their checks to me.

Q. And did they bring you their checks?

A. Yes, sir.

Q. Personally?

A. Personally, or sent them in by someone.

Q. Now, I ask you specifically in what type of business was Mr. Creighton, Mr. Sommers and Mr. Kelly engaged?

A. I imagine they were in the gambling house business.

Q. You imagine it?

A. I suppose they were, I never was out there, 853 and I never saw their business.

Q. I am going to ask you, did you know, or didn't you know in what business those gentlemen were engaged?

A. They were gamblers.

Q. Now, how long did this—strike that—just when did this particular currency exchange open for business?

A. July 20th, 1938.

Q. What was the name of it?

A. The Lawrence Avenue Currency Exchange.

Q. And besides yourself who was interested in that business?

A. Mr. Hartigan.

Q. Financially?

A. Yes, sir.

Q. Did you have a partner in that Exchange?

A. Well, he made a provision—

Q. I am asking you, did you have a partner in that Exchange. Please answer yes or no.

A. Yes, Mr. Downey.

Q. He was your partner?

A. Right.

Q. Now, go ahead and make the explanation you 854 started to a moment ago.

A. Mr. Hartigan invested that money, and he said on one condition, that I bring in his niece and let her work for me. He said everything we did, why I should put her into it, and I made her a partner on my books, which she was not, not in equal proportion, because my experience and her not knowing anything about that business. She never had any experience of that kind, never worked in a bank, in her life, or did anything clerical and I had to teach her everything, so she did just the clerical work, that is all she did. She looked after his interest.

Q. She looked after his interest?

A. That is right.

Q. Did she own an interest in the Exchange or was she looking after Mr. Hartigan's interest as agent?

A. It was his money and she looked after it for him.

Q. It was his money and she looked after it for him?

A. Yes, it was his money and he put her in there, in other words, I made her a partner to look after his 855 interest.

Q. Back of the scene you considered that you and Hartigan were partners rather than you and Miss Downey?

A. Yes, in other words he trusted me with the money, he did not give it to her.

Q. Did you put in any capital?

A. Yes.

Q. How much?

A. A little over two thousand dollars.

Q. Where did you get that money?

A. That was my own money.

Q. Where did you get that money?

A. I earned it.

Q. How?

A. Do you think after working about thirty-five years that you ought not to have a couple of thousand dollars?

Q. I am just asking you, I don't want to quarrel with you.

A. You asked me that question and I am telling you.

Q. Yes.

A. I think that is a personal question, anyway.

856 Q. This is a very personal matter down here, now let us not get trying to lecture each other, because after all we will get along better if we do not start that?

A. Yes; all right.

Q. How long did the currency exchange continue business?

A. About a year and a half.

Q. When did they close?

A. September, 1939, September 30th.

Q. Kindly state the circumstances leading up to the closing of the currency exchange, please.

A. Business was very slow, I could not see my way clear, if the other checks had not been coming in I could not have continued my business, so it was advisable that I advise Mr. Hartigan that there was no use of my continuing, because I would lose my capital and his capital.

Q. In other words, Hartigan's business ceased?

A. Well, it was getting thinner all of the time.

Q. And that produced the closing of the currency exchange?

A. That is right. I advised him there is no use of continuing, because I would only lose my money and lose his too.

857 Q. Was the gambling business thinning out or closing up, or what was it?

A. The gambling business was thinning out, I guess.

Q. They were not closing?

A. I do not know.

Q. Mr. Hartigan talked to you about this, didn't he, you were partners in business?

A. Hartigan didn't see me but very, very seldom.

Q. That does not make any difference if you were partners in the currency exchange, and you are discussing the closing of the business because you are not getting any business from him.

A. That is right.

Q. Now, go ahead and tell us all about that.

A. I told you.

Q. Did he say that the gambling houses were closing?

A. He did not mention that to me.

Q. Did he say he could not send you any more checks?

A. Business was getting thinner and he said they might close and if they did close I would not have any business.

Q. He said that they might close—I beg your pardon?

858 A. That is right.

Q. He told you that?

A. Yes, sir.

Q. Did you wait to see if they did close?

A. No, I had no connection with that.

Q. After Mr. Skidmore was indicted you decided to close up?

A. I don't know Mr. Skidmore. I don't know anything about that.

Q. Well, you read the newspapers?

A. Once in a while.

Q. You know the Grand Jury indicted him the last of August or the first of September?

A. I don't know much about that.

Q. And that caused the currency exchange to close along with the gambling houses, didn't it?

A. No, sir.

Q. I beg your pardon?

A. No, sir, it had nothing to do with it.

Q. It had nothing to do with it whatever?

A. Absolutely had nothing to do with it, I never knew him in any way, shape or form, and I swear to that.

Q. Well, we will cross that bridge later on.

859 A. All right.

Q. You say the Albany Park Bank Building was empty?

A. No, there was a safety deposit vault in there, but outside of that there was nothing else in there.

Q. How do you know that?

A. Because I was in the neighborhood.

Q. Was it only from neighborhood accounts that you knew that?

A. No, I used to live in that neighborhood.

Q. What else did you know about the Albany Park Bank business?

A. Not a thing other than it was empty. I thought it was a good spot to be in.

Q. Did you know who owned that building?

A. No, I did not.

Q. You lived in that neighborhood?

A. I did not know anything about that.

Q. But you knew that spot?

A. I did not know anything about the building until I rented it.

Q. And you lived in that neighborhood?

A. Yes.

Q. You knew it was a good spot?

860 A. Certainly.

Q. And you wanted the location in that building?

A. That is right.

Q. You never knew who owned it?

A. No, I swear I did not.

Q. Tell us about how you went about arranging for space in that building.

A. I went in to the girl and asked her what it would cost to rent that space in the building, and who was the owner, and she said I would have to see Mr. Goldstein.

Q. Go ahead.

A. I went down to see Mr. Goldstein, and tried to rent the premises from him, I think I saw him three or four times, I don't know how many times I did see him before I rented it, and he asked me what I could pay and I said I don't know what I could pay, but that I could not pay a whole lot. He said, "I want \$75.00 a month," and I said, "I don't think I can pay you \$75.00 a month," and finally, I broke him down to \$50 a month.

Q. Do you know who owns that building?

A. I imagine Mr. Goldstein does, I do not know other than that, that is where I paid the rent, I paid him the rent for the building.

861 Q. Unless Mr. Goldstein owns the building you do not know who owns it?

A. If he owns it, he is the one I talked to.

Q. I will ask you again, do you now know who owns that building?

A. I could not say whether he owns it or not, but I presume he does.

Q. You do not know for sure who owns it?

A. No, I don't know for sure who owns it.

Q. You say there were vaults in that building?

A. Yes, safety deposit vaults.

Q. And they were in charge of a girl?

A. Yes, sir.

Q. What is her name?

862 A. Helen Koop, I guess.

Q. Did you see people coming to that vault?

A. Yes.

Q. Whom you knew?

A. Yes, quite a few.

Q. Tell us the people that you saw coming to the vault that you knew.

A. Old timers that I have known from the Northwest Side of Chicago all my life.

Q. Tell us a number of them for the record.

A. You mean some of the people that have safety deposit vaults?

Q. Yes, that you knew.

A. A party by the name of Winebreaker.

Q. What is his first name?

A. I do not remember his first name.

Q. Go ahead and state a few more.

A. A lot of people, I cannot remember their names, sir, I know them and forget their names.

Q. Mr. Sommers, did he have a box there?

A. Not that I know of.

Q. Did any of your customers in the currency exchange also have a box in the vault?

863 A. Yes, the customers had a box, a lot of them did.

Q. And some of the gambling customers of the currency exchange, did they have boxes?

A. Not that I know of.

Q. Not that you know of?

A. No.

Q. Not a single one?

A. I could not say they did.

Q. What books and records did you keep pertaining to the currency exchange business, I want you to detail each one.

A. I cancelled money orders, money order register, a statement of my business from the time I started until I went out of business.

Q. Cancelled money orders?

A. That is right.

Q. What next?

A. The money order register.

Q. The money order register?

A. That is right.

Q. And what was the third record?

A. A statement of my business.

Q. And what did that include?

A. That included my earnings for income tax purposes.

Q. Are those all of the records that you kept covering that business?

A. That is right, that is all that I thought was necessary to keep.

Q. I am asking you if those are all of the records you kept covering the business from the time of its inception of its closing?

A. Yes, sir.

Q. Do you mean that answer?

A. Sir?

Q. Do you mean that answer?

A. Absolutely.

Q. What do you mean to include among the statement of business, what records?

A. My profit and loss sheets for income tax purposes for my own personal use."

Mr. Hurley: The portion from there on, the rest of 497 to the bottom of 410 was read yesterday.

(Continuing reading:)

"Q. Who else was there when you burned them?

A. No one else.

Q. Did your partner Hartigan know that you burned the records of the business?

A. No, sir.

865 Q. Did you tell him about it?

A. Yes.

Q. What did he say?

A. I told him they were of no further value to anyone and no use to anyone, so why should we have them laying around, there is no use of my carrying them around with me, the only records I actually needed are those that I am keeping.

Q. Did you ever hear of criminal evidence?

A. Well, I suppose I did.

Q. If a man is killed with a gun then the gun is evidence of a crime, isn't it?

A. That is right.

Q. Don't you suppose that those sheets might have been of some value to the United States Government?

A. You folks had plenty of time to come out there and get them if there was anything to go on, I didn't know

anything about it; if I knew anything about it I certainly would have kept them.

Q. Do you know a man named Frank Clifford?

A. I don't know him, no.

Q. Do you know of him?

A. Not that I can say now.

866 Q. What can you say about him?

A. I cannot say anything about him.

Q. Didn't he make contact with you along last fall?

A. There was somebody made contact with me, I tell you the truth, I had a lot of domestic trouble at that time and my head was in a whirl and I do not know just exactly what took place.

Q. Mr. Clifford identified himself as an Internal Revenue officer when he made the contact with you, didn't he?

A. I guess he did.

Q. He did?

A. I just cannot recollect.

Q. And he made an appointment for you to come down to his office?

A. Well, I do not know just what it was.

Q. Did you destroy those sheets before he made contact with you?

A. Way before.

Q. Did you destroy those records way before or after you made contact with Mr. Clifford?

A. Before, away before.

Q. Before?

867 A. Yes, sir.

Q. About when did Mr. Clifford make that contact with you?

A. I do not know just what date, it must have been in October some time.

Q. What time in October did you destroy the records?

A. About the 2nd or 3rd day of October.

Q. Were you ever cautioned by anyone to keep those records?

A. No, sir.

Q. Not a living soul on earth ever told you to keep those records?

A. No.

Q. You realize you are under oath, don't you?

A. Absolutely, and I am telling you the truth.

Q. And you realize the consequences of failing to testify truthfully before the Federal Grand Jury?

A. I have a clear conscience, sir.

Q. You do?

A. Yes, sir.

Q. And you were never told to keep those records by any living soul on earth?

A. No, sir, because I have my own figures.

Q. Do you know a man by the name of Bagshaw?

868 A. Yes, sir.

Q. What do you know about him?

A. He was my auditor.

Q. He was your auditor?

A. Yes, sir.

Q. Did he audit these books from time to time?

A. Every month.

Q. What do you say, do you say that you never were told to keep those records?

A. He never advised me to keep any records only what I used for income tax purposes.

Q. What did he say in that respect?

A. I could not say that he said anything, we never talked about it.

Q. No conversation about it at all?

A. No, there was no reason to talk about it.

Q. Where are those records which you retained and did not burn?

A. At my brother's home.

Q. At your brother's home?

A. Yes, sir.

Q. Where is that?

A. 4948 North Spaulding avenue.

Q. What is his name?

869 A. Ralph Brown.

Q. What is his business?

A. Insurance.

Q. Where have you been since you broke the appointment with the Internal Revenue Agent Frank Clifford?

A. In Chicago.

Q. All of the time?

A. Practically, yes.

Q. Please detail your whereabouts since you broke the appointment with the Internal Revenue Officer.

A. Well, I went to Dubuque, Iowa one day and I went—

- Q. About when did you go to Dubuque, Iowa?
A. I went to Dubuque, Iowa the day Mr. Clifford called me.
Q. That very day?
A. Yes.
Q. What time of day did you leave Chicago?
A. About one or two o'clock, some time in the afternoon.
Q. What time?
A. I don't know what time.
Q. How did you go to Dubuque, by train or automobile?
870 A. By bus.
Q. Who went with you?
A. I went by myself.
Q. Who did you see in Dubuque?
A. I don't know anybody there.
Q. Where did you stay in Dubuque?
A. I did not stay in Dubuque.
Q. Did you stay over night there?
A. No.
Q. Where did you go to from Dubuque?
A. To St. Joe, Michigan.
Q. Where did you stay in St. Joe?
A. At Whitcomb Hotel.
Q. At the Whitcomb Hotel?
A. Yes, sir.
Q. Under what name did you register?
A. Under my own name.
Q. As S. Brown?
A. Yes.
Q. Where did you register from?
A. From Chicago.
Q. How did you go from Dubuque to St. Joe, Michigan?
A. Through Chicago.
Q. You came through Chicago?
871 A. Yes, sir.
Q. You came through Chicago from Dubuque to St. Joe, Michigan?
A. Sure.
Q. Did you stop at Chicago?
A. No, I took the North Shore train and bus out.
Q. Who, if anyone, in Chicago, did you see that you knew?
A. I did not see anybody.

Q. Didn't you communicate with anyone in Chicago?

A. No, sir.

Q. Now, let us understand, please, you left Chicago and went to Dubuque?

A. Yes, sir.

Q. And returned from Dubuque to Chicago?

A. That is right.

Q. And then went from Chicago to—

A. Michigan.

Q. What place in Michigan?

A. St. Joe.

Q. St. Joe?

A. Yes.

Q. Now, upon the occasion when you returned from
872 Dubuque to Chicago, how long did you stay before you left for St. Joe, Michigan?

A. I only stayed a couple of hours in Dubuque.

Q. You do not understand the question.

A. I am sorry.

Q. How long did you stay in Chicago before you left for St. Joe, Michigan?

A. I would say a couple of hours.

Q. You did not communicate with anyone in Chicago?

A. No, sir, I had trouble with my wife at that time, and I was much **disgusted**.

Q. Do you know Mr. William Goldstein?

A. Yes, sir.

Q. How long have you known him?

A. Since I rented the premises there.

Q. A little louder, please.

A. Since I rented the building there.

Q. You knew he is the attorney for Mr. Skidmore and Mr. Johnson, do you not?

A. That is what I heard.

Q. You know that, don't you?

A. I do not know it other than reading it in the newspapers.

Q. Were you in contact with Mr. Goldstein at
873 any time after Internal Revenue Officer Frank Clifford made contact with you?

A. Never, never.

Q. Either directly or indirectly?

A. Never.

Q. You went to St. Joe, Michigan from Chicago?

A. Yes.

Q. How long did you stay in St. Joe?

A. About a week.

Q. Who, if anyone, did you see there that you knew?

A. I was looking around to see whether I could go in business there.

Q. Well, you have not answered the question.

A. I did not see anyone in particular.

Q. Thank you. While in St. Joe, Michigan, did you communicate with anybody either directly or indirectly?

A. No, sir.

Q. You did not make any telephone calls to Chicago?

A. I might have.

Q. All right, who did you call?

A. I called my wife.

Q. You did?

874 A. Yes.

Q. Long distance?

A. Yes.

Q. From the hotel?

A. From the hotel.

Q. What conversation did you have with your wife, so far as this currency exchange business is concerned, I do not care to invade you domestic affairs.

A. I did not have any conversation with her to amount to anything.

Q. And after you left St. Joe, Michigan, where did you go?

A. I went to Milwaukee.

Q. Where did you stay in Milwaukee?

A. The Schrader Hotel.

Q. At the Schrader Hotel?

A. Yes, sir.

Q. Under what name did you register?

A. My own name.

Q. Did you communicate with anyone at all while at the Schrader Hotel?

A. No, sir.

Q. No one at all?

875 A. No.

Q. In going from St. Joe, Michigan, to Milwaukee, Wisconsin, what route of travel did you take?

A. I came to Chicago and took the North Shore train.

Q. How long did you stay in Chicago on that occasion before leaving for Milwaukee?

A. Just long enough to go through.

Q. How long did you stay in Milwaukee at the Schrader Hotel?

- A. One night.
Q. Then where did you go?
A. To Chicago.
Q. Where in Chicago?
A. To my brother's house.
Q. After leaving your brother's house, which I take as
4948 Spaulding—
A. Yes, sir.
Q. —where did you go?
A. No place in particular.
Q. Have you been in Chicago ever since?
A. Yes, sir.
Q. And have you been in communication with your
wife?
A. No.
876 Q. Aside from the one telephone call that you made
to her from St. Joe, Michigan, you have not com-
municated with her at all?
A. That is right.
Q. Have you communicated over this period of time
with Jimmie Hartigan?
A. No, sir, I have not seen him.
Q. I beg your pardon?
A. I have not seen him.
Q. Have you communicated with him?
A. No, sir.
Q. Or with Mr. Goldstein?
A. No.
Q. Tell us for what period of time you were with your
brother?
A. About six or seven weeks.
Q. About six or seven weeks at his home?
A. Yes, sir.
Q. Was that a continuous period?
A. Practically, yes.
Q. Practically?
A. Yes.
Q. Between what dates?
A. I could not tell you.
877 Q. Oh, yes, you can, this is fresh in your mind.
A. I said six or seven weeks up to now.
Q. Did anyone accompany you on the trips you de-
scribed to this Grand Jury?
A. No.
Q. Why were you moving around so rapidly?
A. My domestic troubles, and everything else just pes-

tered the life out of me, and I just felt that I wanted to get away from everybody and everything, that is all, to get a quiet mind, I had not been working or earning any money, and naturally you know what those things are in a home.

Q. On the occasion that you telephoned your wife from St. Joe, Michigan, did she advise you that the Government was looking for you?

A. She did not say anything to me at that time, I do not think, no.

Q. Don't you know that your wife has been a witness before the Federal Grand Jury?

A. I believe she was.

Q. You know she has been questioned as to your whereabouts, hasn't she?

A. I imagine so.

Q. Where did you tell your wife you were going to go when you left Chicago?

A. I told her I was going to Dubuque.

Q. Did you tell her where in Dubuque you were going?

A. No, I told her I was going to Iowa because I was familiar with Iowa, and I thought maybe I could locate something down there, but I found there was no use in going into Iowa at all.

Q. You live at 4200 Hazel avenue?

A. Yes, sir.

Q. And Bill Johnson lives at 4224 Hazel avenue, doesn't he?

A. I don't know.

Q. Well, his mother lives there, doesn't she?

A. I don't know, I never saw her in my life.

Q. You know that you can reach Bill Johnson at his mother's home any time that you want to?

A. I never knew anything about that, I don't know if I could, I never knew my next door neighbor, even, I was never home much.

Q. While you were skipping around the country in the manner you have described, where was Bernice Downey?

A. I don't know anything about her.

Q. You don't know that your partner Jimmie Har-
879 tigan took her to Florida?

A. I don't know anything about that.

Q. How did you happen to come in to the Government, more or less surrender yourself as a witness?

A. I had got a summons there at my brother's house.

Q. Who made the contact with you to come into the Federal Building here?

A. No one.

Q. Then why did you come in?

A. Because I was summoned in.

Q. You were not summoned, who told you to come down to the building?

A. I was summoned, I had a summons waiting for me at my brother's house?

Q. At your brother's house?

A. Yes.

Q. When did you receive that summons?

A. I guess it was yesterday or the day before.

Q. This was mailed to you at your residence, 4200 Hazel avenue, wasn't it?

A. No, sir, not that I know of; it was left there by some man, I don't know what his name is, Graber, or some man named Graves, something like that.

880 Q. Who, outside of the Government service, has been talking to you about coming into the building and testifying before the Federal Grand Jury?

A. No one, sir, I did not know I was wanted to come in.

Q. Who is it behind the scene that is telling you what to do, during the last two or three months?

A. No one, that I know of, sir.

Q. Well, you would know who has been giving you directions, wouldn't you?

A. I do not know of anybody giving me any directions because I have not seen anyone.

Q. What was the purpose of your visiting Dubuque, Iowa, St. Joe, Michigan, and Milwaukee, Wisconsin?

A. Just to get away from myself, to quiet my own mind, that is all, and figuring out, maybe I could open a currency exchange in some of those places.

Q. Have you been in Missouri since you ran away from Revenue Officer Frank Clifford?

A. No, sir, and I never ran away from anybody.

Q. Have you been any other place than those you have described to the Grand Jury?

A. No, sir.

881 Q. Are you quite positive of that?

A. Yes, sir.

Q. Have you told the whole truth to the Grand Jury as to your whereabouts?

A. Yes, sir.

Q. Since you destroyed the records or burned the records of the currency exchange?

A. Yes, sir.

Q. Now, you state that certain of the records pertaining to the currency exchange are at your brother's home?

A. That is right.

Q. Are you willing to go with a Government officer to that home and get those books and records?

A. Yes.

Q. When did you take them to your brother's home?

A. They have been there ever since I closed up.

Q. You took them there immediately?

A. Yes, sir.

Q. Did you tell your brother where you were going?

A. No, I did not, I do not tell my personal affairs.

Q. Why did you take these records to your brother's home?

882 A. I figured I had to keep them, for the outstanding checks and money order register, because there were two or three outstanding yet, and that is the only reason I did it, otherwise, I would have burned them up, too.

Mr. Plunkett: What is your brother's address, Mr. Brown?

A. 4948 North Spaulding.

A Juror: You said you do not know Bill Johnson?

A. I said I do know Bill Johnson.

The Juror: Didn't you say a while ago that you did not know Bill Johnson?

A. I did not say that.

Q. Isn't it a fact the location of your bank is 3955 Ogden avenue?

A. What bank?

Q. The Ogden National bank?

A. Yes, sir.

Q. And isn't it a fact that Bill Johnson operated at 4020 Ogden avenue?

A. That is right.

Q. And he would come into your bank very often?

A. Not often, he would come in there occasionally.

Q. Well, every day?

883 A. No, not every day.

Q. And isn't it a fact that the Lawndale Greyhound track you say was at 26th and Cicero?

A. Yes, something like that.

Q. Was really at 26th and Kostner, that is the correct address, isn't it?

A. I don't know, I was never there in my life.

Q. You were never there?

A. No, sir.

Q. You were never there with Bill Johnson?

A. No, sir, I never was in any gambling place in my life. Never did any gambling in my life.

Mr. Campbell: Anything else?

A Juror: Did you ever have any communication by note, made by a go between, did you ever have any communication in note form with anybody?

A. No, sir, no communication whatsoever.

Mr. Campbell: Anything more? That is all for the present, Mr. Brown.

(Witness excused.)"

Mr. Miller: Commencing at Page 504, Wednesday, January 10th, 1940, 1:30 o'clock P. M.

(Reading:) "The Grand Jury reconvened, pursuant to adjournment. Counsel present: Same as before.

STUART SOLOMON BROWN, called as a witness by the Grand Jury, having been previously sworn, resumed the stand, and was examined and testified further as follows:

Examination by Mr. Campbell.

Q. You are Mr. Stuart Solomon Brown?

A. Yes, sir.

Q. Please keep your voice up.

A. Yes, sir.

Q. Mr. Brown, you were present this morning and testified?

A. I did.

Q. At that time you were sworn?

A. That is right.

Q. At the conclusion of your testimony this morning, you were requested to go to your brother's home and to return with certain books and records, which you had not burned, pertaining to your currency exchange business on Lawrence avenue. Is that right?

A. That is right.

Q. Were you able to find those books and records?

885 A. Yes.

Q. They are still in existence?

A. Yes, sir.

Q. Which you referred to this morning?

A. They are all here.

Mr. Campbell: I will ask the Reporter to mark for identification, Grand Jury Exhibits 17, 18 and 19.

(Documents so marked.)

Mr. Campbell: Q. Showing you Grand Jury Exhibit 17, is that a part of the books and records which you brought to the Grand Jury?

A. All of them.

Q. Referring to Grand Jury Exhibit 17, is that a part of the records which you brought down to the Grand Jury?

A. It is all of them I have, sir.

Q. Will you answer the question, yes or no. I will ask you whether Grand Jury Exhibit 17 is a part of the records you brought down to the Grand Jury—answer yes or no?

A. I did not—

Mr. Miller: Excuse me. Your Honor please, is that "out" mark your mark, did you put it in there?

886 The Court: I didn't put it in. You don't need to read it unless you want to.

Mr. Miller: All right.

(Continuing reading:)

"Q. You answer my questions, otherwise we will go up to the court and get an order upon you as a witness, unless his attitude changes on it. We will have to go up before Judge Woodward and get a Court order, asking that you be held in contempt for refusing to answer the Grand Jury's questions.

A. Yes, sir.

Q. Is this a part of the record which you have brought down to the Grand Jury, Exhibit 17?

A. Yes, sir.

Q. Now, will you tell the Grand Jury what Exhibit 17 is?

A. That is the cancelled money orders.

Q. I beg your pardon?

A. That is the cancelled money orders.

Q. Cancelled money orders?

A. Yes, sir.

Q. Now, showing you Grand Jury Exhibit 18, is that a part of the records of the Lawrence Avenue Currency Exchange which you brought down to the Grand Jury?

A. It is.

Q. Will you kindly state to the Grand Jury what Exhibit 18 is, if you know?

A. That is a record of the money orders that were issued and paid.

Q. Is Grand Jury Exhibit 19 part of the records of the Lawrence Avenue Currency Exchange, which you have brought to the Grand Jury?

A. Yes, sir.

Q. Will you kindly state what that Exhibit 19 is, if you know?

A. That is a record of my earnings and expenses in the operation of my business from the time I started until the time I finished.

Q. By whom?

A. By the auditor, C. F. Bagshaw.

Q. And Grand Jury Exhibit 17, contains the cancelled checks relating to the money orders?

A. That is right.

Q. And Grand Jury Exhibit 18 is a record of those money orders?

A. That is right.

888 Q. Where are your correspondence files?

A. I have destroyed them also, because they were not of any consequence.

Q. You burned them?

A. Yes, sir.

Q. Where?

A. In the Bank Building there.

Q. In the furnace?

A. That is right.

Q. Who else was present when you burned your correspondence files?

A. Well, I threw them into the furnace, and the janitor burned them.

Q. The janitor burned them?

A. They were burned. There was a pile there. I did not make a fire to burn them. I threw them into the furnace.

Q. Is that a coal furnace or a gas furnace?

A. Coal.

Q. Who opened the door of the furnace, when you pitched the records in there?

A. I opened the door, and I put them in.

Q. Is that furnace down in the basement of the building?

889 A. That is right.

Q. Who helped you to carry the records down?

A. I did—myself.

Q. Was the janitor present when you opened the door and threw these records in?

A. I do not think he was. He was upstairs, or some place. I do not remember just exactly. It was just a bunch there, of papers.

Q. I beg your pardon?

A. I destroyed them, tore them, threw them in there.

Q. You burned the correspondence files, is that right?

A. That is right.

Q. And you burned all of the records relating to checks which you cashed for your customers?

A. That is right.

Q. What else did you burn?

A. That is all.

Q. Is that all?

A. That is all, yes, sir.

Q. Did your partner, Jimmy Hartigan, or James A. Hartigan, know that you burned those records?

A. I told him about it.

890 Q. What did he say?

A. Well, he said 'if they are of no more use to you, in connection with your records', why he said, 'except as far as my income tax was concerned—that is all that was necessary.'

Q. Before you burned these records did you discuss the matter of the burning with your partner, James Hartigan?

A. No, I did not.

Q. Did you mention it to him in any way?

A. No.

Q. So, it was after you had burned the records that you mentioned the matter to your partner, James Hartigan?

A. That is right.

Q. Did you advise Bernice Downey that you intended to burn these records?

A. I mentioned to her there is no use in keeping them

—no use in keeping them—we might as well get rid of the excess papers that we did not actually need for anything.

Q. What did Bernice say about that?

A. She said all right.

Q. Why did you not allow her to do some of the 891 burning?

A. After all, I was running the operation of that place, and she was just merely a clerk.

Q. She was merely a clerk?

A. Yes, sir.

Q. In other words, she had no voice in the management of the business?

A. She has never had any experience, of any kind, in that kind of a business. I had to teach her everything that she had done.

Q. Aside from that, did she have any voice in the management of the business?

A. I would say no.

Q. Now, before you went to the Central National Bank, on Halsted street, with your currency exchange business, what other bank, if any, did you patronize?

A. North Shore National.

Q. Where is that located?

A. On Howard street.

Q. What address on Howard street?

A. I just do not know the number there, sir. It is on Howard, near Clark.

Q. North Shore National Bank?

892 A. That is right.

Q. Did you have an account there?

A. I did, that is where I commenced.

Q. Under what name?

A. Under the Lawrence Avenue Currency Exchange.

Q. Now, in the removing from the North Shore National—or why did you remove your currency exchange account from one bank to the other?

A. Well, they could not handle my operations satisfactorily for me—they went along—the rates were much higher at the Central National Bank than they are at other banks. There are three banks in Chicago that make a practice of handling currency exchange accounts.

Q. Did the first bank have any objection to your currency exchange business?

A. They did, yes.

Q. In what respect?

A. Well, we had return items—they did not like to have the return items, and they preferred—or they felt that they did not want that kind of business.

893 Q. Specifically, as an ex-bank cashier, kindly explain to the Grand Jury, will you please, what you mean by a return item?

A. A check that is returned for insufficient funds, or it might have been stopped, for endorsement, or any other negotiable instrument, that would require proper handling.

Q. Among these different classes of return items that you have mentioned, which particular class was the greatest?

A. Well, I would say that the checks were.

Q. What?

A. The checks,—not on my own, so much, as it would be on those received from Hartigan.

Q. In other words, the gamblers rustled checks?

A. Yes.

Q. Checks that came from gambling houses, bouncing?

A. Yes.

Q. And the first bank objected to the number of checks which were bouncing, is that right?

A. That is right.

Q. For that reason you took your business from one bank to the other?

A. No, that was not the reason.

894 Q. That was not the reason—

A. They requested me to take my account out.

Q. In other words, you were invited politely to get out of the bank?

A. No.

Q. Because of so many 'non-sufficient funds' checks?

A. It was not as many as you enumerate there—what it seemed to be—but it was more than they probably cared to have.

Q. Did you have any difficulty in renewing your banking connection with the Central Bank?

A. No, sir. I had my account opened before I had my account closed.

Q. What was that?

A. There is an association in Chicago—after we rented that place, they went and put pressure on me not to have my account opened, and I had to iron that out with them.

Q. Just what do you mean by that, kindly explain what you mean by ironing it out?

A. There is an association in Chicago called the Chicago Currency Exchange Association that objected to me having that place of business there, because there was another one around the corner. In other words, they wanted to put 895 me out of business.

Q. Did anyone assist you in ironing out that difficulty?

A. I do not know, anybody directly—no one directly assisted me.

Q. Well, if Wiley and Cagy witnessed—did anyone assist you, indirectly?

A. I do not know. I imagine someone did.

Q. Can you imagine who that somebody was?

A. Well, I reported to Mr. Goldstein, and after all I had given his name as a reference down at the bank and I said to him, 'it seems like we will have difficulty in getting my account started,' and he may have gone down to the bank to talk to them for me.

Q. He may have?

A. He may have. I was not there, if he did, because I know they opened my account and conducted my business.

Q. Do you know whether or not Mr. Goldstein did in fact go to the Central National Bank?

A. I do not know. I certainly did not—I was not there, as I say; and he never told me about it. I told him about my difficulty.

896 Q. Did you request him to go?

A. No, I did not.

Q. Why did you go to Mr. William Goldstein in any event?

A. I was in the place of business there, and if I was cut off from my bank connection I would be out of business.

Q. How did you come to go to the Central National Bank?

A. Because we found out they were the only one of the banks that handled currency exchange business.

Q. Is that the only reason you went to that particular bank?

A. Positively.

Q. Absolutely?

A. Yes, sir.

Q. No question about that?

A. That is right.

Q. Does Mr. Goldstein have a brother who is a stockholder in the Central National Bank?

A. I swear that I do not know.

Q. Do you know an Abe Winter?

A. Yes, sir.

897 Q. Did he have anything to do with your going to the Central National Bank?

A. No, sir.

Q. What is his relationship, if any, business or otherwise, between Abe Winter—

A. Abe Winter—his business, coming to the bank as a customer, on the Ogden National Bank. This is the first that it came to me,—that I know of—that he ever said anything to me.

Q. What is his business?

A. He is in the automobile loans.

Q. His name appears as the one who referred your business to the Central National Bank, does it not?

A. Well, it may be,—because I really do not know him—for the simple reason—I went down to see him, and I told him I was opening up a currency exchange business, and told him I was going to have some money, and I think he said that if he could—'If I can do anything, put in a good word, I will.'

Q. Did not Mr. William Goldstein direct you to take your banking business to the Central National bank because his brother was a stockholder in that bank?

A. No, sir.

898 Q. Nothing like that?

A. Absolutely.

Q. If Mr. Goldstein says that he did—is that right or wrong?

A. If he did—I did not—I do not know what he would say. I am telling you the truth.

Q. What did you understand Mr. Goldstein was doing, in ironing out this difficulty, to use your expression?

A. I know he was an attorney. I thought maybe he could help me. I did not know anything about Mr. Goldstein, other than that short period that I knew him.

Q. Was he your attorney?

A. No, sir.

Q. Whose attorney was he?

A. He acted as my landlord.

Q. Well, that does not create the relationship of attorney and client, Mr. ex-cashier of the Ogden National bank.

A. Being an attorney, and being the owner of the build-

ing—we were renting from him then, and the most natural thing would be, it would be to his interest to have us remain—stay in the building.

899 Q. He is a lawyer, and he charges fees for his services?

A. He may, but he never charged me.

Q. Can you account for that?

A. Positively. You can look through all my records.

Q. Those that you did not burn, I can look through?

A. All of my records.

Q. Those that you did not burn?

A. Those that I burned, sir, I absolutely felt at that time were not necessary for me to keep, because all I was required to keep—I was not under supervision of the Government or State—to keep the records—and I kept all that was necessary for my personal affairs, and income tax for the Government—what the Government would care to see about my books, and this auditor's report, and that is the conclusive thing. I would not have done that if I had known the Government wanted them. I certainly, positively, would have kept them, so help me, I would have.

Q. Why did you go to Mr. Goldstein and ask his intervention in assisting you in establishing a banking connection with the Central National Bank?

900 A. I did not go to him, sir. I talked to him—telling him what difficulty I was having.

Q. Why did you talk to him, in any event? Why did you talk to him?

A. After all, I was renting from him, and if I did not get a banking connection I would not be in business.

Q. Did you take it up with Mr. Hartigan, after you were going to be kicked out of one bank, and would have to go to another bank?

A. I believe I did.

Q. What did Jimmy say about it, to you?

A. He did not mention anything. He said, 'It is up to you; go ahead'—and do my own business.

Q. You had put \$2,000.00 apiece up—you had about \$2,000.00 apiece up there?

A. That is right.

Q. And you had to have a banking connection?

A. That is right. Otherwise I would not be in the currency exchange business.

Q. I beg your pardon?

A. Otherwise I would not be in the currency exchange business.

Q. Notwithstanding the fact of that situation,
901 Mr. Hartigan said you should go ahead and do whatever you wanted to do?

A. That is right.

Q. He did not suggest you go to see anyone?

A. No, sir.

Q. Not to go to Mr. Goldstein?

A. No.

Q. These correspondence files that you burned up. What did they contain?

A. They did not contain hardly anything—just the letters from the banks, maybe on some checks, on uncollected funds, or insufficient funds—to tell you the truth there is very little of it.

Q. Suppose you state the best you can remember what that file contained in the way of correspondence?

A. It was letters.

Q. To whom, from whom?

A. Some were to the old banks.

Q. Relating to what?

A. To checks that were N. S. F.

Q. Of suckers who had lost those checks in gambling houses, is that right?

A. Not necessarily.

902 Q. Not necessarily?

A. Yes, sir.

Q. What do you mean by your last answer?

A. They would be possibly on other business, letters on other business.

Q. Among the letters, were those relating to checks of customers of the gambling houses, who had lost those checks in those houses—is that right?

A. It might have been.

Q. That is the fact, is it not?

A. I say, it might have been.

Q. I say, is not that the fact?

A. Yes, sir.

Q. I am not going to shout at you any more—I do not think. I am going to ask that this Grand Jury vote on a contempt citation of your conduct, and take you to the Judge, if you persist in the attitude you are now as-

suming. You can answer these questions without all of this beating about the bush. Did you utilize the services of any credit agency?

A. Yes, sir.

Q. In the conduct of this currency exchange business?

903 A. I did.

Q. What credit agency?

A. National Appraisal.

Q. I beg your pardon?

A. That is Hill's report—National Appraisal, I could say.

Q. In what respect did you use Hill's report in conducting this currency exchange business?

A. There were times when Mr. Hartigan would come in there and say: 'Get a report of so and so, and see whether his credit is good,' and they wanted to see that the—these checks were good, that they were cashing.

Q. Did you charge them a fee for that service?

A. Yes, sir.

Q. How much did you pay Hill's report for such a report as that?

A. \$1.25.

Q. How much did you charge Hartigan for such a report?

A. \$2.00.

Q. You made 65 cents profit?

A. That is right.

Q. Where are those files?

904 A. They were destroyed immediately, because I reported to Hill's I would never let them out of my hands—they would look them over—get their information, and I would destroy them, because we had no further interest in them.

Q. By what method would you destroy them?

A. Tore them up.

Q. You mean that you made that destruction before you closed business?

A. Right along.

Q. Right along?

A. Every time we got a report, and read it, I would not give it out of my hands.

Q. Did you get any letters from time to time from the Armored Car Service people?

A. No.

Q. Did you have any Armored Car Service delivering currency?

A. Yes, sir.

Q. From the Central National Bank to your place of business?

A. That is right.

Q. Did you receive any letters from time to time with respect to that particular phase of your business?

905 A. Nothing in particular—I would get nothing, not their moneys—I would not say, maybe one or two, asking me for my business, something like that, a statement every month.

Q. You did receive such letters?

A. Yes, sir, letters and statements from the Armored Car Service, but nothing particular to any business transactions.

Q. What did you do with those letters?

A. They have been burned with my correspondence, because they did not amount to anything, sir.

Q. How did you use the Armored Car Service in connection with your currency exchange business?

A. I would call for money, at the Central National Bank, and it would come out by the Armored Car Service, if I call in the afternoon, and they would bring it out to me, or I could call in the morning and they would bring it to me in the afternoon.

Q. That would run into several thousands of dollars a trip?

A. That is right.

Q. The Armored Car people delivered to you several thousand dollars in currency?

906 A. That is right.

Q. They would pick up a batch of checks, and take them back down, would they not?

A. That is right.

Q. To the bank?

A. Yes.

Q. And as those checks were cleared, they would send a load of currency back from the bank?

A. Yes, sir.

Q. Was there any correspondence relating to that?

A. There was not correspondence—I will explain that to you. When we made our deposits they were deposited

against uncollected funds, and we were charged interest by the month, for that purpose. If I called them up in the morning, I would gauge my deposits, the night before, and when they brought the currency, they would take my deposit back.

Q. Did they not write you letters from time to time, and tell you the amount of currency they were delivering to you by the Armored Car Service?

A. No, sir, never.

Q. And they never wrote any letters to you about how much money they were sending?

A. That was just the way they handled my deposits, 907 when the currency came back, all I did was sign the Armored Car expressman's book.

Q. And the Central National Bank never wrote you a letter about that matter at all?

A. Never about currency.

Q. And did not write, in substance, stating, 'We have delivered \$3,500.00 in currency'?

A. No. I would call them up and tell their paying teller what I wanted, and he would make up what I wanted.

Q. If there should be a carbon copy of such letter in the files, which the Central Bank has produced here, would you say, notwithstanding that, that you did not receive the originals of such letters?

A. If I received them—I do not recollect them.

Q. That is a little different.

A. I cannot recall really having received them, to tell you the truth.

Q. Do you say that did or did not happen now?

A. I would say I cannot recollect them. I would not want to put myself on the offensive.

Q. Just for your information, the file that the Central National Bank produced here, contains letters—or carbon copies of such letters, and at a later appearance before 908 the Grand Jury I shall confront you with them.

A. O. K.

Q. Now, you had many checks returned marked "N. S. F." Is that right?

A. That is right.

Q. Which, in the banking world, means—

A. 'Not sufficient funds'.

Q. Many of those checks came to you from the gambling houses which you were servicing—is that right?

A. Yes, sir.

Q. What did you do with those checks?

A. I would take them off of what they had coming, or they would come in and pay me the cash for them immediately.

Q. What did you do with the physical check itself?

A. Returned it to them.

Q. Returned it to them?

A. Yes. Never put it through—very seldom—a second time. There were times I did, but very seldom."

(Mr. Hurley thereupon resumed reading as follows:)

909 Mr. Hurley (Reading):

"Q. Now, from the time you opened this currency exchange, which was in 1938, until you closed it in 1939—

A. Yes, sir.

Q. How many dollars worth of checks did you handle for these gamblers?

A. I could not recollect the total, sir.

Q. Just a little louder, please.

A. I could not recollect the total.

Q. Can you give the Grand Jury an approximate figure?

A. Well, it might have been 40 per cent, of my own—and maybe 60 per cent of theirs.

Q. 40 per cent of your business was business from the gamblers?

A. 40 per cent was my own business, off the street.

Q. 40 per cent was your own business off the street?

A. Yes.

Q. And 60 per cent was the business of the gamblers?

A. Yes, sir.

910 Q. Would you say roughly that is the proportion?

A. I would recollect it would be—I am really not sure. I would not like to have that put in as a statement, because I am not certain.

Q. We understand that is subject to a little variation there, but would you say, as a rough division, that is your best judgment—in the absence of your burned books and records—you say the books and records have been burned—we will have to presume these things, which can be done in a court, and you say that the division, roughly, is 60 per cent and 40 per cent?

A. Something like that, I would say.

Q. In other words, 40 per cent came from legitimate business, from the street?

A. That is right.

Q. 40 per cent of the volume of your business, was it?

A. Yes.

Q. And 60 per cent came from outlaw business—or these gamblers—is that right?

A. Whatever you want to call them.

Q. Is that the situation? Is that the fact?

911 A. Yes, sir.

Q. Now, in order to accurately determine that division, it could be mathematically determined—it would be necessary to have access to these records which you described, would it not, Mr. Brown?

A. Not necessarily.

Q. It can be done otherwise, can't it?

A. Yes, sir.

Q. How?

A. By the banks. It can get that information from the bank.

Q. How does the bank know which checks came from gamblers, and which checks came from legitimate business?

A. They have got our deposit checks, or tickets, and they can figure them up, and make the division.

Q. On the 60-40 basis?

A. Yes. That would not be so hard to do.

Q. Without applying the formula 60-40, you could not figure it mathematically, could you?

A. No, no way I know of.

Q. If you had retained them?

A. That would be the only way you could get it,
912 out of my books.

Q. If you had retained these books, upon which you listed these checks, the bank on which it was issued, and the name of the last endorser—if you had retained those checks, you could tell how much business came from the gamblers—from the gambling houses, could you not?

A. Well, that is just hard to say, sir, because there was many checks payable to cash, without endorsements on them. Many checks are payable to cash, and I take them in my own business. It would be hard to make the division.

Q. Did you make a note on these sheets, listing the checks, as to who brought the checks in?

A. Not necessarily, because we had tapes of the detail—and the totals, that they would bring in.

Q. Did not Maurice Downey bring in a load of checks to you?

A. Yes.

Q. Did not Marvin Downey bring in some checks?

A. Yes.

Q. Did you mark on those checks, or sheets you got from Marvin Downey, or Maurice Downey, whoever has brought in the check?

913 A. It might have been in some cases, but we did not do it in all cases.

Q. Did you have some kind of a symbol which you would put on the checks to indicate which check came to you from Kelly's gambling house?

A. I might have done that.

Q. You had on those sheets some symbols which indicated the checks that came from Jack Sommers' place of business?

A. I might have shown some.

Q. It is the fact?

A. I did not handle that—I let the girl type those things up for me.

Q. What girl?

A. Miss Downey.

Q. You kept those records in such a fashion that you could tell whether a check came from Bill Kelly, Jack Sommers, Jimmy Hartigan, or Andy Creighton, did you not?

A. I would say yes.

Q. You had to do that in the ordinary course of business, otherwise you would get the business all mixed up, and could not tell who brought a check in?

A. When I paid that, sir, we always paid by the tape,—we had the tape, with the total they brought in. That
914 tape I kept until I discharged the payment. I did not use the book for that purpose.

Q. When a check, or a number of checks came in from a gambling house, you did not show on those checks from whom they came, did you?

A. No, I got it the next day—and sometimes the same day.

Q. And as you cleared those checks through the bank, did you make a notation on that?

A. No, they paid on uncollected funds.

Q. What?

A. They were paid against uncollected funds. They do that at all the currency exchanges. Being charged for one day's interest, or two days' interest, until the final payment is made at the end of the month.

Q. The bank is willing to pay out in excess of the balance which you maintain at the bank?

A. They will pay up to the last dollar in the currency exchange.

Q. The last dollar of what?

A. If I had \$5,000.00 in checks, they would pay \$5,000.00.

915 Q. Suppose you had \$1,000.00 when you came into the bank, would they still pay the excess?

A. Do you mean if I had \$1,000.00 plus \$5,000.00?

Q. In the Lawrence Avenue account?

A. Yes, sir.

Q. In the Central National bank, and assuming you only had \$1,000.00 on deposit—

A. Yes, sir.

Q. —then, that is all you had in the account, and you took in \$5,000.00 in checks from the gamblers do you mean to say that the bank will cash in full the \$5,000.00 of checks?

A. Yes, if we get in there we can get it the same day— if I could have gone down I would have gotten it the same day from any of the windows.

Q. Did not the bank notify you that they would not allow you to cash checks in excess of the balance that you maintained at the bank?

A. No, sir.

Q. Nothing like that happened?

A. I really do not remember anything like that, sir.

Q. Well, you had currency coming through, all the time from the bank?

916 A. Always had checks going to be deposited, and currency coming back.

Q. You had on hand currency which belonged to the gamblers?

A. Yes, sir.

Q. Representing the proceeds of checks cashed for them?

A. That is right.

Q. As they would bring in their bundle of checks?

A. Yes, sir.

Q. You would deliver to them currency, to the amount of the face of the checks?

A. That is right.

Q. But you would not pay out on those particular checks immediately, would you?

A. We always did. The only difference was, that there

might have been times that I had currency there—in other words, I would get checks one day and pay them out the next day. There would be one extra day.

Q. Why did you not pay them immediately?

A. Well, if there were a small amount, \$500.00, or \$300.00, it may be that I would pay them in cash, from my own drawer—but because of a larger amount, and I 917 did not have that much money on hand, I only had \$4,000.00 to work with.

Q. And sometimes these checks would come in at the rate of many thousands a day?

A. \$2,500.00—\$3,000.00, \$4,000.00.

Q. \$10,000.00?

A. There might have been some of those items. It might have been as high as that—\$10,000.00—that we put aside to cover the checks cashing feature, and the currency feature—

Q. Of the currency exchange business—aside from that service which you rendered to the gambling houses?

A. Yes, sir.

Q. Did you render them any other service?

A. No, except those reports.

Q. And aside from the reports, and the cashing of the checks, is it your testimony that you did not render them any other service?

A. Positively not.

Q. Positively not?

A. That is right, I swear to it.

Q. Did you not obtain bags of coin from the banks?

A. Do you mean get silver?

918 Q. Yes.

A. I do not know what you mean—surely I would get silver for them.

Q. You would get bags of silver—have bags of silver brought out, from the bank?

A. Yes.

Q. Brought to the currency exchange—what would those bags of silver be?

A. Well, they could be nickels, quarters, or half dollars, nickels, something like that. Certainly it is the same as currency.

Q. Then the messenger from the gambling houses would pick up those bags of silver?

A. Currency, yes.

Q. Why do you suppose they were giving those silver coins?

A. I do not know, sir. It is not province. I do not know.

Q. What about converting bills—little bills—

A. Yes, sir.

Q. —into C-notes?

A. I do not say that I have very much converted little bills into C-notes, or exchanged old money for new money.

A lot of times they would give C-notes. They would have them in the large notes, for their checks.

Q. In other words, you took the old, worn out bills, and exchanged them for new bills?

A. That is right.

Q. That was a service?

A. That is right.

Q. Then, you would take the little money, and convert it into big money, into \$100.00 bills, sometimes called C-notes, in your service?

A. I never got much of that, I do not believe.

Q. But it has happened, has it not?

A. I suppose it has.

Q. You converted little, and worn out currency, into \$100.00 bills, and returned the new \$100.00 bills to the gamblers, did you not?

A. If you will pardon me, or if you will permit me, I will say—very little that we did—

Q. If you will answer my question, yes or no, you can make any explanation that you wish, or you may define it.

A. I am trying to state the facts.

Q. Did you, yes or no?

A. Yes.

920 Q. Go ahead, make any explanation you care to?

A. I had very little occasion to do that at all. As I have said, we exchanged old money for new money. They want new bills. They may want new fives—because they use them in their business, I suppose.

Q. Is the \$100.00 bill the largest bill which you obtained for them?

A. Yes, sir.

Q. So, they brought to your currency exchange not only their checks to be cashed, but they brought to your exchange coins and bills, did they not?

A. To be exchanged, yes.

Q. Yes, to be exchanged?

A. Yes.

Q. Did you keep any record pertaining to the amount of coin and bills which they brought to the currency exchange to be exchanged?

A. I handled that on the tape, the same as we did with the checks.

Q. What did you do with that tape?

A. We kept it from month to month, and then destroyed them?

Q. Burned them?

921 A. Absolutely.

Q. What volume of business, in dollars and cents, coming from these gambling houses, was in the form of coin and currency, how much money a month?

A. That would be included in any total of my business, because that would be on the deposit ticket, the same as if it was a check, that I deposited. If I deposited old currency, and got new currency back, the currency and the checks would be included together.

Q. Well, did you not handle currency for them, which would not be reflected on your deposit tickets?

A. No, because if that came in—any currency I draw for them would have to be deposited, and I would give it to them, the same as if a check. It is practically the same transaction.

Q. Could you take that currency to the bank and exchange it into \$100.00 bills without depositing it?

922 Q. The Armored Car could handle that service, without depositing it in your account?

A. They did not do that. The Brinks do that, not the Armored Car.

Q. You take their currency, and it would be delivered to your Currency Exchange, and from there deposited by you in the bank account?

A. Yes.

Q. And you could draw against it by check?

A. I would not draw a check that way. My account would be charged.

Q. They would charge the account, and deliver it back into currency or coin as you directed?

A. Yes, sir.

Q. Were all the checks of the Currency Exchange drawn against its bank account?

A. All the checks that I had, up to date, were burned also.

Q. They were burned also?

A. Except, after the close of my business, after everything was wound up and everything was paid, and everything was taken care of, except \$136.00 of outstanding money orders—that is all that was left in my account.

Q. And you described everything?

923 A. I did, because I did not want anybody to get hold of my signature. Of course, it had the signatures on it. And on those things, if somebody got them, they might say that there was a check not paid, and I would have to show my cancelled voucher.

Q. And who assorted this evidence and told you what to burn and what to keep?

A. No one—no, one, sir; and no one ever talked to me.

Q. Does it not occur to you that you burned all the evidence relating to the business of the gamblers, with the sole exception of the money orders or records, which are retained in these entries—and everything else pertaining to the business of the gamblers has been destroyed? Is that right?

A. That is all of my affairs, as far as the Bank—as far as the Currency Exchange is concerned, were burned, because I did not want to keep them any more, anyway. I was out of the business. There was nobody to see that I should keep them, and no reason I had to keep them. There was nobody to care whether I should keep them or not. If I had known, I would have done different.

924 Q. Do you read the newspapers right along—do you not, Mr. Brown?

A. I read some of the good news once in a while.

Q. Did you not know, before these records were burned, which you have described here to the Grand Jury, that William R. Skidmore had been indicted by a Federal Grand Jury?

A. He had no connection with my business, and I never knew him, and it was just as casual to me as it would be to a stranger in another town.

Q. O. L. Alexander, Mr. Skidmore's brother-in-law—

A. I do not know him. I never saw him in my life.

Q. He was then connected with the Horseshoe gambling house and the Dev-Lin for years?

A. I swear I would not know him if I saw him on the street.

Q. You were never inside—

A. No, sir.

Q. —any of these gambling houses?

A. No.

Mr. Plunkett: Q. You knew that the bookmakers and gamblers were under investigation, did you not?

A. I figured it had nothing to do with me.

Q. Did you not know it as common knowledge 925 throughout the newspapers, all summer?

A. I presume it was, yes. I did not pay so much attention. It did not interest me.

Q. You knew your clients, did you not?

A. What clients?

Q. Jack Sommers, Jimmy Hartigan, and the rest of them?

A. The only ones I ever knew—

Q. You knew they did run books?

A. I believed so.

Q. Did it ever occur to you then that your records of their business would be valuable?

A. I had no thought in mind at all of what was going to occur.

Mr. Campbell: Q. Well, you were a cashier of the Ogden National Bank; at that time did you say Mr. Bill Johnson, or did you say he had a checking account there?

A. A small account.

Q. What other business, besides this checking account, did Mr. Johnson transact through your bank, as far as you know?

A. None whatever—he opened it, as an accommodation to me, as far as I know.

Q. Did he get checks there?

926 A. I do not recall that he ever did.

Q. What about Jimmy Hartigan?

A. Jimmy Hartigan, at that time, did not do much. Practically, as I remember, one of the tellers cashed their checks, and there was nothing, except that he would say 'hello,' when he went by. I never waited on him—I never waited on any—

Q. During the time you were cashier of the Ogden National Bank, where was Hartigan working?

A. He was working on the Ogden Avenue gambling house.

Q. 4020 Ogden Avenue?

A. Yes, sir.

Q. 4020 Ogden Avenue?

A. Yes.

A Juror: Q. He was working over there?

A. I guess so; if he owned the place—or working over there, I do not know.

Q. You say he was working over there?

A. I would say he was there, I do not know.

Mr. Campbell: Q. Now—

A. I would not like to have that statement go into the record. I am not certain.

Q. It is already in, subject to such explanation as you may have made. That is the purpose of having these answers written down in this manner.

927 A. I do not wish you to think I am trying to evade, or trying to—you know, I am a little bit nervous—to tell you the truth.

Q. I do not think anything. I just ask questions.

A. I do not want you to feel that I am doing that. I have always lived a clean life, and I have never been arrested in my life, and have never been before a Jury like this in my life. I feel my conscience is clear.

Q. As a bank cashier, did you make a practice of going to the door of a furnace, and burning the records of the bank—did you ever do that as a cashier?

A. That was a different circumstance, sir. I was under no supervision in the Currency Exchange business. For one year it was practically my own business, to do as I chose. If I had known different, in that case—if I had known what was coming up, I would not have done it.

Q. Well, you were cashier at the Ogden National Bank, and at that time did you meet Jack Sommers?

A. No, sir, I did not know him then.

Q. You did not come in contact with him at all?

A. No.

Q. Did you meet Ed. Waite?

928 A. No, sir, never knew him.

Q. Being a cashier at the Ogden National Bank—when did you cease that occupation?

A. In September of 1931, when the Bank crashes were going on.

Q. At that time Hartigan was the only one of this group which you knew?

A. That is right.

Q. And Bill Johnson?

A. That is right.

Q. You did not know Andy Creighton?

A. No, sir.

Q. Or George Ferner?

A. No, sir.

Q. Or John Flanagan?

A. No, sir. I would not know Creighton, or any of those other fellows, if I met them on the street at that time.

Q. This accountant who made the final report for your Currency Exchange was C. F. Bagshaw & Company. Did he render a regular report to you, covering your Currency Exchange business?

A. Well, he came out there monthly, and went over my books.

929 Q. And he made a report?

A. That is right, earnings and so forth.

Q. And at the close of business he came out and made a final audit of the books?

A. That is right. I asked him to. That is all in there.

Q. Can you look at Grand Jury Exhibit 19, and tell me the date that this final audit was rendered to you on that Exhibit—do the books show?

A. September 30, 1939.

Q. September 30, 1939?

A. Yes, sir.

Q. Where did Mr. Bagshaw deliver this report to you, Grand Jury Exhibit 19?

A. He sent it to me at my office.

Q. Where?

A. At the Lawrence Avenue Currency Exchange.

Q. Did he deliver this report to you on or about September 3, 1939, or a few days later?

A. I would say about the first of October.

Q. He delivered this to you?

A. He sent this by mail.

Q. About the first of October?

A. He sent it by mail. He had it done on that 930 day, in pencil figures, he put it all down in pencil figures, and he typed it out, and sent it over to me. I imagine that was the way that he did it.

Q. In making this report, Grand Jury Exhibit 19, did Mr. Bagshaw have access to the sheets which contained a list of the checks?

A. No, sir.

Q. That you cashed for the gamblers?

A. He never looked at that, I do not believe.

Q. But he had access to them?

A. Yes, sir.

Q. And he saw them?

A. Yes, sir.

Q. Before your Currency Exchange, the Lawrence Avenue Currency Exchange—

A. Yes, sir.

Q. Please wait until I have completed the question.—took over this gambling business—

A. Yes, sir.

Q. —did you know whether any other Currency Exchange was rendering a like service?

A. No, I did not, sir.

Q. Of these gambling enterprises?

A. No, sir, I did not.

931 Q. That you took this business away from another Currency Exchange—did you know that.

A. Mr. Hartigan brought that in to me—that was one of the inducements in opening my business, he would help me to get this business.

Q. You knew that the Albany Park Currency Exchange had been handling this business for years, before you took it over?

A. No, I did not know that at all. I did not even know the man that was in there.

932 Q. Did you not know that the Albany Park Currency Exchange was handling this business before you took it over?

A. I did not know it at that time, no, sir.

Q. When did you first become aware of that fact?

A. I became advised of that fact when I tried to open my business—it might have been one of the things that was brought up by the Currency Exchange Association, so that I could not get that business.

Q. Go ahead.

A. That is one of the things that he brought up

Q. By 'he,' who do you mean?

A. By this fellow that owns this Albany Park Currency Exchange.

Q. What is the name?

A. Marcus.

Q. Marcus?

A. Yes, sir.

Q. At that time was there some controversy between you and Mr. Marcus?

A. Nothing else but the fact when I tried to open up my business, there was this organization fighting me—he did not come out in the open about it—it was his organization that tried to stop me from opening my business.

933 Q. What was the basis of their complaint against you, as far as you know?

A. I do not know, other than what I have assumed, that the thing that you are talking about—about the checks that he did not cash, that came over to me.

Q. In other words, when you opened your currency exchange you diverted the business from the gamblers' end of it—it did not stay with Mr. Markus—is that it?

A. It might be the case. I do not know for sure.

Q. Mr. Markus became disgruntled?

A. I imagine that might be so.

Q. And caused you a little annoyance, we will say?

A. That is right.

Q. There was another currency exchange handling this business, on the same basis, before you opened the Lawrence Avenue Currency Exchange?

A. I could not say myself, because I do not know. I was not around there at the time.

Q. You discussed the matter of changing this business from one currency exchange to another, did you not?

A. You say 'discussed this matter' about changing this business from one currency exchange to another—no.

934 Q. Changing the business from Markus' currency to your currency exchange?

A. No, sir.

Q. Did you not discuss that with anyone?

A. No, sir.

Q. Did you not discuss that with Jim Hartigan?

A. No, sir. I did not know Markus at that time. I did not know there was a currency exchange, until a couple

of weeks later, to tell you the truth—never paid any attention to it.

Q. When you first approached Mr. Hartigan, I take it, it was your idea to open a currency exchange?

A. That is right.

Q. Just how did you happen to pick that out—how did you happen to talk that up with Mr. Hartigan?

A. When I first met him, as I said, downtown on State street, he asked me what I was doing, and I told him I was out of work, and had been out of work for a year. I said, 'I have tried to get a job in every place, being refused on account of my age, and the next best thing for me to do is to get into some kind of a business, and
935 see what kind of a business I could get into.'

I had seen the currency exchange business, and I said, 'There might be a big thing in it.'

I talked to him about it, and he seemed to be interested, and he said, 'Come out and see me, and I will talk it over with you.'

Q. Did he not indicate to you at that time that his organization was then using the services of a currency exchange?

A. He never mentioned anything to me about it.

Q. Did not say a word?

A. No, sir; the only thing, he told me to come back again, to come back a second time, and I convinced him. I said, 'That is a great thing, and it looks interesting to me, I think I can make some money out of it, maybe.' And he said, 'See what you can do, find a location, get started, and come back to me.'

A Juror: Q. What is Markus' full name?

A. I do not know his first name.

Q. Do you know his initials?

A. I could not recall. I only saw him once in my life.

Q. You would choose a location?

A. Yes, sir.

936 Q. For the exchange?

A. Yes. You see, I have lived in that neighborhood for many years.

Q. There was another exchange around the corner?

A. Because he was on a side street there, I did not know that he was there at the time.

Q. You did not know there was another one just around the corner?

A. I did not know, until a week later.

Q. How long had you lived in that district?

A. Well, I should say about fifteen—fifteen or twenty years.

Q. And you did not know?

A. He was out there during the time I was there. I was away, on the road, for four years, and during that time that he had his currency exchange—when I came up to look at Lawrence avenue, I did not know there was somebody around the corner, and no one ever said anything to me.

Q. Is it not unusual that you were starting up a business there, with another right next door? Or close by?

A. Well, the reason is, as I say, that I rented this 937 place, and I wanted to go through with it. I thought that maybe it was a good spot, and I think he was formerly in that spot; I think he was formerly located in there. But he was out of there two years before that. He was not in there for two years. I think—I thought maybe I might get some business on account of the vault, people coming in there, a lot of people that knew me.

Q. I see.

Mr. Plunkett: Q. Did not Mr. Hartigan know that the other man was around the corner from you?

A. He never spoke to me about it, because when I came around, came to him, he did not say that. We never discussed that. He said, 'Go ahead, get started, and if you get started, I will put money in with you.'

Q. You were never in the currency exchange around the corner?

A. Yes, I was in there, once, to talk to him, when we had an argument about getting into the business.

Q. That was after you opened?

A. Yes. Markus had moved out there, and he was around on a side street, and I thought we could 938 co-operate together.

Q. You had never been in there?

A. Never before; never knew Mr. Markus before, never.

Q. Mr. Hartigan knew him?

A. I could not say, sir. He never talked to me about it, but I did not ask him.

Q. Did Mr. Hartigan tell you that he had cashed a check there before you had started?

A. No, he did not say anything about it, except that

'I will throw you some business—I will throw you some business your way when you are started'.

A Juror: Q. Is Mr. Markus still in business there?

A. Yes, sir.

Q. And even the diminishing of the gambling business has not caused him to fail?

A. Evidently not. He has four or five places, and if you only make \$5.00 in each place each week—each day—he would make money. He would be making some money where I could not, where I had only one place. It is the volume of business that counts. It takes a large volume to make any money in that business.

939 Mr. Campbell: Q. Mr. Brown, after you closed on Lawrence avenue, after you closed the Lawrence Avenue Currency Exchange, did you thereafter meet Mr. William Goldstein?

A. No, no.

Q. Did you meet him, immediately or prior to or about the time you closed the Lawrence Avenue Currency Exchange?

A. No, sir. I called him on the telephone, and told him I was going out of business.

Q. That was before you closed?

A. About a week before, something like that.

Q. And that was the last week in September?

A. That is right.

Q. Just what date did you go out of business?

A. September 30.

Q. September 30?

A. I closed my business September 30. I was there a couple of weeks after that, for any calls to clean up my affairs.

Q. You stayed on the premises two weeks after September 30?

A. That is right.

Q. And that would carry you over to October 15?

940 A. That is right, approximately about that time. I do not know the exact date, at all.

Q. Did you continue your telephone service?

A. I took that for a week after my closing of the business.

Q. Did you pay any rent for that two weeks period?

A. No, I did not.

Q. You did not?

A. No.

Q. Why?

A. I just did not pay rent, that was all. I was out of business. I was not making any money.

Q. You were occupying the premises?

A. I was not doing any business, however. The place was empty, as far as I was concerned.

Q. As far as Mr. Goldstein was concerned, was he in the habit of allowing people to occupy the premises without paying rent?

A. I told him I was out of business on September 30, and I told him I was not going to pay rent.

Q. Did you tell him you were going to sit around a couple of weeks to close things up?

A. I do not know whether I mentioned it.

Q. He knew that you would be there for two weeks
941 following the closing?

A. I do not know if he knew it. His girl was there, the girl who has charge of the vaults.

Q. Did Mr. Goldstein come out there?

A. No.

Q. Did he have a safety deposit box in that building?

A. I could not say so.

Q. Did you see him coming and going, to and from that building?

A. I will say he came to the building, and he talked to the girl in the vault and he talked to me.

Q. He was out there then, and he was there right along supervising the management of that building?

A. He did not come out there once in three months.

Q. During the period of time that you were in that place, how many times did you see Mr. Goldstein out there?

A. I would say maybe three times.

Q. What was he doing?

A. Nothing, just talking to the employees, saying 'Hello', and 'Goodbye'.

Q. He asked you how business was, did he?

A. Yes, sir.

942 Q. Now, that two weeks period in October, 1939, did you tell the Grand Jury that during that period you did not see Mr. Goldstein at all?

A. I am sure I did not.

Q. Did you not come down here in the loop, to his office, to see him?

A. Not that I can recollect.

Q. Well, now, think hard.

A. Yes, sir, I was down there.

Q. All right.

A. Once.

Q. Yes.

A. I came down to see if I could get a location.

Q. Tell us what you talked about, when you went down there?

A. I asked about a job, whether he could locate one for me.

Q. Go ahead, and state what you said to Mr. Goldstein and what he said to you on that occasion.

A. He just asked me why I could not go on with the business. I told him.

Q. What did you say to him?

A. I told him the business was not working out without the checks I was going to get from these boys.

943 Q. You told him that without the gambling business you could not survive?

A. Absolutely.

Q. What did he say to that?

A. He said, 'It is too bad'.

Q. Well, what else did he say?

A. Nothing else.

Q. Oh, yes.

A. I asked him if I could get located with a position through him.

Q. What else did he say about the gambling business?

A. Nothing else—nothing at all. We did not even talk about the gambling business.

Q. You told him without the gambling business you could not survive?

A. I told him that I could not get the checks—we were not getting the checks from Hartigan, and my expenses kept running in the red, every month.

Q. Just what did he say to that?

A. He said it was too bad.

Q. Did he indicate that business was gone?

A. He did not indicate anything to me. Never spoke anything about it.

Q. How did you know that business was gone?

944 A. I was told there would not be any more checks.

Q. Who told you that?

A. Mr. Hartigan.

Q. And you relayed that information to Mr. Goldstein?

A. I did not say anything to him about it.

Q. You just said you did?

A. I mean the general line of conversation. I said my business was thinning down. I would not be able to keep that up.

Q. Why did you go to Mr. Goldstein with that hard luck story?

A. I did not go to Mr. Goldstein with the hard luck story. I asked him for a job, if he could get me located. That is what I went there for.

Q. Why should Mr. Goldstein take care of getting you a job?

A. After all—

Q. Why does he have that obligation to you?

A. He was not obligated to me.

945 Q. Why did you go to him, and appeal to him to get employment?

A. After all, I did not know anything about the man. I thought he was interested in some business where I could locate. After all a man has got to get a job.

Q. You did go to Mr. Goldstein after you closed the currency exchange?

A. I was there once, I recollect, right afterward.

Q. Was that before you burned the records, or after?

A. It was after.

Q. How long after?

A. Well, I was in the office for about two weeks, as I say. After that time I was free to go wherever I could.

Q. Did you burn the records after September 30, 1939? Or before?

A. After September 30.

Q. How long after?

A. The next three or four days—I would say within the week.

Q. Some time in the first week of October you burned the records?

946 A. That is right.

Q. How long was it after September 30, 1939, until you went into Mr. Goldstein's office?

A. I just do not remember the time, to tell you the truth. I was downtown, looking for a job, and I stopped into his office.

Q. That was right during the first week in October you stopped in his office?

A. No, it **was later**.

Q. Was it before the 15th—was it before?

A. It may have been after the 15th, and before the 30th of the month, because I filled a lot of applications out downtown for positions. I do not know what date I was in there. I do not know what date, I could not say. I just would not know.

Q. You had a telephone out there in the currency exchange premises around the 10th of October?

A. I think it was around the 6th of October I cut it off.

Q. Did you go there regularly between the 30th of September and the 15th of October?

A. Yes.

Q. To the currency exchange?

A. Yes sir.

947 Q. To receive your mail?

A. I stayed there all day, and I waited for the cancelled money orders to come in, so I could check them off, and the bank was refunding the cancelled money orders. I was waiting to make the list for the bank, of the outstanding money orders, that we still had to pay—that still had to be paid.

Q. You received telephone calls over that period, many telephone calls?

A. Up to the time I disconnected the service.

Q. Why did you not telephone to Mr. Goldstein instead of going to his office?

A. I was downtown looking for a job, and stepped into his office.

Q. Was there something that you had to discuss personally, that you did not care to discuss over the telephone?

A. Nothing at all, sir. I wouldn't swear, I would not have discussed anything—he would not have discussed anything with me, anyway.

Mr. Miller: Q. I will show you, Mr. Brown, Grand Jury Exhibit 18, which you have described as what?

A. As a Money Order Register.

Q. Money Order Register?

948 A. Yes, sir.

Q. And this Grand Jury Exhibit 18, being the Money Register—the Money Order Register—shows a record of every money order that was issued by the currency exchange from the time it started business?

A. Yes, sir.

Q. Until you ceased?

A. That is right.

Q. And you started, according to this—you issued the first check on July 22, 1938. Is that right?

A. Yes, sir, according to that, yes, sir.

Q. Did you make any entries in this book?

A. Yes, sir.

Q. Do you recognize the writing on page 1 as yours?

A. Well, I do not think—those records are not mine. I think the girl wrote these.

Q. What girl?

A. There may be some here—yes, I have written some of them.

Q. You have written some of them?

A. Yes.

Q. Who else wrote in this book?

A. Just myself, and the young lady was writing, Miss Downey.

949 Q. All the time it was kept, you and Miss Downey were the only persons who made any records in this book?

A. That is right.

Q. No one else had access to this book at all?

A. No.

Mr. Plunkett: Q. Did you have any other employees?

A. No, sir.

Mr. Miller: Q. Do you know Miss Downey's handwriting when you see it?

A. This is her handwriting.

Q. This is one that appears on page 1?

A. Yes.

Q. Under date of September 12, and date of September 16?

A. That is right. It may be part of my handwriting. I might have entered some of the days in there, from the requisitions, and she may have, too.

Mr. Plunkett: Q. Will you show us any that are in your handwriting?

A. There are none on that page. I do not see any on that page.

Q. That is all in Bernice Downey's handwriting?

A. There are some of mine in there.

950 Mr. Miller: Q. You are now referring to the date of September 12 and the date of September 16, 1938?

A. Yes, sir. All of these are her handwriting.

Q. And on that page it is all in Bernice Downey's handwriting?

A. Yes, sir.

Q. And take the page in front of that, covering the period from September 2 to September 12—do you see any of your handwriting on that page?

A. Yes, sir.

Q. Under what dates?

A. Here is one. Here is one.

Q. Which one is that?

A. That is it.

Q. September 8th?

A. Terman Stores Corporation. And here is one for Lady Lynn.

Q. Lady Lynn.

A. That is right.

Q. Are there any others in handwriting on there, that you recognize?

A. This is Bills Realty. This is Lester Eddington. This is National Service.

951 Mr. Miller: Q. That is referring to September 10, that group of items?

A. Yes.

Q. Whose handwriting is that?

A. That is hers.

Q. That is Miss Downey's handwriting, is that right?

A. Yes.

Q. The last item on the page is dated September 12. Whose handwriting is that?

A. That is hers.

Q. That is her handwriting, and this is her handwriting?

A. That is right.

Q. You are sure of that?

A. This is my handwriting, right there. My sister-in-law's check.

Mr. Plunkett: Q. Did you say the other was her handwriting, the Terman Stores Corporation?

A. Yes, sir. This is my handwriting, yes. You can tell, on the different lines. She had a better handwriting than mine. There is one. There were only two of us that wrote in that book.

Mr. Miller: Q. Apparently on some days either
952 you or Miss Downey decided to print instead of writing, is that right?

A. She printed those.

Q. Is all the printing in the book done by Miss Downey?

A. I may have done some. A lot of times I print instead of writing. My handwriting is 'no good', so I print sometimes.

Q. And this is Grand Jury Exhibit 17, and this box contains a 11 of your cancelled checks?

A. Except a few that might be outstanding yet.

Q. And this is the register of the checks, Grand Jury Exhibit 18?

A. Yes, sir. Here is one that is outstanding.

Q. Except those checks that were outstanding at the close of your business—

A. That is right.

Q. Is that right?

A. That is right. They are over here, some place.

Q. What was your practice with regard to selling these money orders? Was there any regulation in connection with it?

A. None whatever.

953 Q. Did you always put down the name of the person who purchased the money order?

A. Yes, sir.

Q. Did you put down the name that the person gave you, or did you just ask them who they were, and put that down?

A. Many times they would write out their own requisitions, and at times they did not, and we would write it for them.

Q. Did you recognize them?

A. Any customer coming to the window.

Q. For each one of these checks issued there are requisitions, is that right?

A. Yes, sir.

Q. That is a form that is filled in by the purchaser of the check?

A. That is right.

Q. In all of those?

A. Yes.

Q. Where are they?

A. I destroyed those also.

Q. You burned those?

A. Yes, sir.

Q. With your other records?

954 A. Yes, because they got a stub on every check issued, and my cancelled voucher was paid. That was

all that was necessary to show that the stub was paid. That is the reason I am holding on to them.

Q. Under those circumstances, those requisitions were in the handwriting of the person who purchased the money order, is that right?

A. Not necessarily. As I say, we made them out, very often, more often than the customer would make them out, and that was a service that we would give to them.

Q. Was it a practice for you to inquire as to who the purchaser was, or did you just follow the information contained on the requisition?

A. We do have to ask them who they want it payable to.

Q. I am not referring to who it is payable to, but did you ask any customer who they were, or did follow the information?

A. The information that was on the requisition.

Q. The information on the requisition, with regard to himself?

A. That is right.

955 - Q. Did you know Mr. Johnson?

A. Yes, sir.

Q. That was Mr. William R. Johnson?

A. Yes, sir.

Q. Was he ever in your currency exchange?

A. No, sir, not that I recollect.

Q. He was not in there?

A. I have never seen him there. I have not seen him in many years.

Q. Have you ever had any business transactions with him?

A. No, sir, none whatever.

Q. Was it a practice, or was it ever a practice for you to make entries in this book in pencil first, and then subsequently make an entry in ink?

A. It might have been done.

Q. I am asking you if it was?

A. Well, I do not think so.

Q. Do you recall ever doing that?

A. I cannot recall ever doing that.

Q. Did Miss Downey ever make entries there, that way?

A. She may have done so, and went over them in 956 ink, and rubbed out the pencil.

Q. If such entries were made, why were they made in pencil?

A. Merely to save a little time, or for some reason or other, for no real reason.

Q. Now, do you think you can write any faster with a pencil than you can with a pen and ink?

A. Yes, you can.

Q. I do not believe it makes any difference. I have seen court reporters using pens—there is one using one now.

A. Anyway, I would not know.

Q. Would that be your only reason?

A. No, there was no reason at all. That is really the only reason for writing in ink, if you will look through there—I do not know. You can see where the pencils are, where you can tell whether that is rubbed out or not. I do not think there was a pencil there. I just could not say."

Mr. Hurley: A question by Mr. Campbell, on Page 575 (Reading):

"Q. Did Mr. William R. Johnson ever purchase any money orders from you?

A. No, sir—never once.

957 Q. Are you positive of that?

A. I am positive of that.

Q. Did he ever have any transactions at all with the currency exchange, so far as you know?

A. Never.

Q. Do you know whether he owns the building where that exchange was located?

A. No. I never knew he owned the building, except when they came for me to inquire about—to see Mr. William Goldstein.

Q. When did you first know that Mr. Johnson owned that building?

A. I never knew that he owned that building.

Q. You do not even know it now?

A. No, sir.

Q. You knew that Mr. Goldstein was managing the building, did you not?

A. I did not know that, until the girl at the office—at the safety deposit vault—told me to see him.

Q. After you saw Mr. Goldstein, you knew that he was managing the building?

A. I was renting from him at that time.

Q. Did you have a written lease?

A. No, sir, a month-to-month lease.

Q. Did Mr. Goldstein indicate whether he was the
958 owner, or whether he was merely the manager?

A. He did not indicate anything.

Q. To whom did you pay your rent?

A. To the girl at the vaults.

Q. I beg your pardon?

A. To the young lady at the vaults.

Q. Did you, in fact, pay any rent?

A. I swear I did.

Q. Would it surprise you to know that the title to that
building stands in the name of William R. Johnson?

A. It would surprise me very much. I would not know
it, sir.

Q. You could not account for the fact that you did not
know it prior to this time?

A. Absolutely, I will swear to the truth of that state-
ment."

The Court: We will recess at this time until 10:00
o'clock Monday morning, ladies and gentlemen.

(Whereupon an adjournment was taken until 10:00
o'clock A. M., Monday, September 23rd, 1940.)

959 Q. You could not account for the fact that you did
not know it prior to this time?

A. Absolutely. I will swear to the truth of that state-
ment.

960 Q. I see.

A Juror: Did Mr. Goldstein give you a rent receipt
every month—every month?

A. Every month?

Q. Yes.

A. The young lady.

Q. How was it signed?

A. Helen Koppe.

Q. Was it signed, agent, or anything of that kind?

A. It was signed Albany Park Safety Deposit Box
Company and Helen Koppe, Custodian.

Q. Where are those receipts now?

A. They have been destroyed. I have destroyed those
things, because they would not have no value to me.

Mr. Plunkett: Q. If you were sued for back due rent,
they would have a value.

A. I have always paid the rent.

Q. You could not prove it.

A. I would not say—

Q. Could you prove that you had paid all your rent on that building?

A. No, other than the girl, would be the only way to do it.

Q. You would have to rely on the girl's record?

961 A. Her cash book would show.

Q. You would rely on the girl's record?

A. Yes, sir.

Q. You do know that the best evidence is a receipt?

A. No.

Q. But you put that into the furnace?

A. I put everything in, as I say, there was no use in carrying it around with me.

Q. And you destroyed every one of your receipts?

A. I have destroyed any kind of a receipt I have ever had, because I have paid everybody in full. I did not owe anybody anything.

A Juror: Q. Who is Bernice Downey; do you know who she is?

A. She is a niece of Jimmy Hartigan.

Q. She is a niece?

A. Yes, sir.

Q. Is her father Sergeant Downey of the Chicago Police Department?

A. I could not say. I have never met her folks.

Q. What would you do if you were forced to make a second payment on some building you had already paid, and destroyed the receipt?

A. Well, I do not make a second payment."

Mr. Thompson: Read a little louder.

962 Mr. Hurley: (Reading:)

"Q. Suppose they had failed to credit your account with this money?

A. The safe deposit vaults are in the same building, and the girl was right next to me, and all I had to do was give her the money. I did not have to go out of the building to pay my rent.

Q. After all, there is no one that is infallible, and it is possible she may have failed to record that on her record, and she may think you still owe her a month's rent, and if she approached you on that matter, what would you say?

A. I would tell her it was paid.

Q. What good would that do you, how would you prove that?

A. People are not that way.

Q. If they were not that way, we would not be here.

A. That is right.

Q. Did you have a lease on that place?

A. No, sir."

The Court: What page are you on?

Mr. Hurley: 580.

The Court: Go ahead.

963 Mr. Hurley: (Reading:)

"Q. You were renting from month to month?

A. Yes, sir.

Mr. Campbell: Q. What did you do with your office machines when you closed the business?

A. They were still there.

Q. Where?

A. At the vault, at the bank building.

Q. What office machines did you have?

A. An adding machine, a typewriter, and I had a Pro-tectograph.

Q. You left that in the building?

A. Yes.

Q. Where, in the building?

A. In the bank.

Q. Did you leave them in the same office?

A. I let the safe deposit office use them, until I can dispose of them.

Q. Do you own them?

A. Yes, sir.

Q. When did you buy them?

A. First, when I went in business—as we went along in business.

Q. You bought them after you started your business?

A. No, we got the typewriter maybe a week later,
964 and I had an adding machine when I opened up.

Q. Where did you buy the adding machine?

A. From the Wales.

Q. New?

A. Yes, sir.

Q. What did you pay for it?

A. \$130.

Q. Where did you get the typewriter?

A. From the Underwood.

Q. New?

A. \$75

Q. That was a second-hand machine? You had furniture and fixtures?

A. That was my furniture and fixtures there.

Q. Where did you get your furniture and fixtures?

A. That is my typewriter, my adding machine, my Protectograph, and everything like that.

Q. Did you have a desk?

A. All the desks were in there. That was the reason we rented the place.

Q. In other words, this was a furnished office?

A. There was a desk—there were desks in the old bank, when the old bank was there, and the bank had been there for 39 years.

Q. What new equipment did you buy when you opened up, in order to operate as a currency exchange?

A. A typewriter, adding machine, and a Protectograph.

965 Q. How did you pay your telephone bills?

A. Whenever they were billed to me.

Q. By cash?

A. By check.

Q. Money order?

A. Money order.

Q. Those money orders should be in Grand Jury Exhibit 17, should they not?

A. Yes, sir.

Mr. Miller: Mark this 17-1502.

(Document so marked.)

A Juror: Could you explain the two handwritings on that check, on Mr. Johnson?

Mr. Plunkett: If you will excuse me, I am going to get into that right now.

Q. Mr. Brown, I will hand you Grand Jury Exhibit 17-563,—

A. Yes.

Q. Which is the exhibit you were looking at before, a check made out for Mr. Johnson.

A. Yes, sir.

Q. And signed by Bernice F. Downey on October 13, 1939.

A. Yes.

Q. And I will ask you to state who wrote the words, 'Mr. William Johnson' on the top of the check?

966 A. That is her own handwriting.

Q. That is Miss Downey's handwriting?

A. It evidently is, because nobody else could have written it. It is not my handwriting.

Q. It is not your handwriting?

A. No.

Q. Who wrote 'H. C. Evans & Company', on that check?

A. She evidently did.

Q. Do you say they are the same handwriting?

A. Yes.

Q. And the same handwriting as Bernice F. Downey?

A. Well, I could not say anyone else. It is not mine, and she is the only one, she has been there with me—who else could I say would do it?

Q. You recognize her handwriting, do you not?

A. Yes, sir.

Q. Do you recognize that as her handwriting?

A. Yes, sir.

Q. The words, 'Mr. William Johnson', and 'H. C. Evans & Company'?

A. Yes, sir.

Q. I want to show you Grand Jury Exhibit 17-1502, and ask you to describe what that is.

A. That is a check purchased by William R. Johnson, payable to N. H. Brune & Company, for \$36.20, by 967 Bernice F. Downey.

Q. Will you just take a fountain pen, Mr. Brown, and write on that sheet paper, 'William R. Johnson'?

A. My fountain pen is out of ink.

Q. Here is one you may use.

A. (Witness writes on sheet of paper.)

Q. Spell out 'William', please. Now, write that again, several times.

A. I have not written it for a long time. Is that enough?

Q. Thank you.

A. You are welcome.

Mr. Plunkett: Someone want to see these?

Q. Referring to that second check, which you just looked at, made out for William R. Johnson, do you recognize that name?

A. 'Bruns'?

Q. Yes.

A. I do not know who they are.

Q. Do you recognize the name 'William R. Johnson'?

A. Yes.

Q. Do you know who purchased that check you were just looking at?

A. No, I do not.

Q. You are still positive he was never in your currency exchange?

968 A. I would swear to that.

Q. Was there anyone that you know of, that bought checks for him, anyone from your currency exchange?

A. Do you mean Mr. Hartigan?

Q. Mr. Hartigan.

A. Yes.

Q. Why would Mr. Hartigan do it?

A. He would come in often. He might have sent somebody in with money, to purchase a money order for that purpose.

Q. Why would Mr. Hartigan purchase a money order for Mr. Johnson any more than I would?

A. I do not know.

Q. Why do you say it was Hartigan?

A. I mention Hartigan, because it may have been somebody that knows him.

Q. Why did you say Hartigan every time we mention Johnson, and why did you talk about Dr. Johnson?

A. The reason I mentioned Dr. Johnson is because Dr. Johnson purchase a lot of money orders, there.

Q. A lot of them?

A. Yes.

Q. A great many?

A. Quite a few.

Q. You are sure of that?

A. Yes, sir.

969 Q. Why did you say it must have been Mr. Hartigan? Do you know of any connection between Mr. Hartigan and Mr. Johnson?

A. No, sir.

Q. None whatever?

A. No.

Q. Why did you select the name of Hartigan, to say that he did that?

A. He must know him, because all gamblers know each other.

Q. That is the only reason you have for saying that?

A. Absolutely. No connection with them. I do not know anything about them. Anyone can come in and purchase a money order.

Q. Will you identify in this book some of your handwriting, please? This is Grand Jury Exhibit 18. Can you find some of your handwriting there?

A. Yes.

Q. These items under date of October 8, purchased at the Lawrence Avenue Currency Exchange?

A. Yes, to pay my own bills.

Q. John M. Smyth Company, Commonwealth Edison Company, People Gas and the Bureau of Water.

A. Not the John M. Smyth. Commonwealth Edison, Peoples Gas, Bureau of Water. That is in there, up there.

Mr. Campbell: Q. Do you pay the water bill there?

A. No. We collected payments for the City of Chicago, the Bureau of Water, and I would make it out at night—the checks for all of the bills, and send it into them.

Mr. Plunkett: Q. Can you find in that book any records of purchases by Dr. Johnson, that you have referred to?

A. The only way here, is I can look through. There is two of them—Marshall Field & Company—and down the line you will find some more.

Q. Did you make that out?

A. No, she wrote that. I wrote this one. I wrote that one check.

Q. Does her handwriting change a good deal?

A. Apparently. It looks that way. It looks the same to me.

Q. Will you see if you can find one for Dr. Johnson that you, yourself, made out?

A Juror: Could I ask Mr. Brown a question?

Mr. Plunkett: Yes, indeed.

A Juror: Q. Mr. Brown, could you explain, on that one check why the ink is different on that?

A. No, I could not—not any more than you could.

Q. Is it not customary to write out the entire check at the same time?

A. It may have been possible something was omitted, and then they put that in it.

Q. In making out money orders that is an important thing?

A. Some times you can make a mistake, and at times when you issue the money order, you forget the requisition, and then we would have to wait until the thing came back, and then you would probably show the different color of ink.

Mr. Plunkett: That has nothing to do with the question

asked you here. The Juror wants to know why, in making out a money order, and signing it in one kind of pen and ink, you would write in the name in another kind of pen and ink, you write the name in there—is not that done in one operation?

A. Yes.

Q. Do you ever make money orders half way and leave them that way?

A. No, sir.

972 Q. Did anybody else have copies of your money orders that they could make up, and bring them over, and have them signed?

A. No, I would say not.

A Juror: Q. Would there be any possibility of this money order being made out in blank, and the individual name added—or the individual adding his own name?

A. No, sir.

Q. Because on the original tally sheet it only shows as Mr. Johnson.

A. I just could not recall that.

The Foreman: Do customers ever write their own names on those checks.

A. Never.

Mr. Plunkett: Q. I note that on some of these checks that the name of the Central National Bank label appears to be pasted on there—

A. Yes.

Q. What is underneath that?

A. North Shore National.

Q. North Shore National?

A. North Shore National, that is right.

Q. That was printed on this check?

973 A. Yes, North Shore National.

Q. And then, the North Shore National is covered, and this label is pasted over, of the Central National Bank?

A. That is right. It was the North Shore National underneath there.

Q. You had those all made up, and you had the North Shore National put on?

A. Yes. I was thinking that I was going to go along with them, all the way through.

Mr. Campbell: Q. Who ran the Crawford Club?

A. I could not say, sir.

Q. It was a customer of your currency exchange, was it not?

A. It may have brought items in, called the Crawford Club—something like that—I do not know.

Q. They bought money orders?

A. Yes, they may have come in, from Jack Sommers—or maybe one of the men would come in, and pay their bills.

Q. Was the Crawford Club one of the gambling clubs?

A. I do not know. I presume it might have been—
974 maybe called the Crawford Club.

Q. Was it one of Hartigan's places?

A. It might have been one of Jack Sommers' places.

Q. Was it?

A. It might have been. I do not know. You see, whenever they come in and buy those checks—Jack Sommers may have purchased a lot of it. This is to the Collector of Revenue, or you may have sent the Social Security man in there, and we put in that name, because he bought the Social Security.

Q. The Crawford Club was some of the business that Mr. Hartigan directed to your exchange?

A. I could not say. I am not certain. I do not know.

Q. Did the Crawford Club buy money orders at the currency exchange?

A. Yes, sir.

Q. Here are two of them?

A. That is right.

Q. You do not know who they are?

A. These men would come in, and purchase those.

Q. What men?

A. Mr. Hartigan, and Mr. Downey—one of the
975 Downey's, whenever they would come in—or when they got the Government tax, they would come in and buy this—his man would. Or they would make that for the Social Security tax, and then I would put that name on.

Q. Have you ever heard of the 4011 Club?

A. No, sir, I have not.

Q. Do you know the 4011 Club—is not that right nearby?

A. 4011 what?

Q. 4011 Club—have you ever heard of it?

A. No, sir, I have not. I do not know even where it is at. You say 4011, I do not know what street, or what other place.

Q. You issued a check for that club?

A. Sure. You remember there are a lot of them, and all of them gave me all of their business.

Q. You do not know who it is, however?

A. No, I do not. I imagine they would send in somebody to buy.

A Juror: Q. Mr. Brown, is it legal to pay Social Security tax with a check of that sort? Is it not the 976 policy that you have to pay that with a Government money order?

A. Well, the Government takes the money.

Q. I have heard of people actually offering cash at the Post Office, on their Social Security tax and being refused.

Q. Well, they would not refuse it here. That all went through. You can look at that.

Q. Does not the same law govern the entire United States? I think this is a fact.

A. I do not believe there is such a law there. They can refuse it, but there is no such law.

Q. The Post Office at Aurora, Illinois, will refuse a cashier's check or a partial check, or anything else.

A. I do not know.

Mr. Miller: Q. Was this a check that was to be used for the payment of the Social Security tax?

A. I do not know, sir.

Q. Do you know John Engstler?

A. I do not recall that name. There are a lot of names, like men that come in and buy, and I never know the man's name.

Q. You do not have any objection to us asking you if you know these people?

977 A. No.

Mr. Plunkett: Q. Your partner is Mr. Hartigan?

A. Yes.

Q. You are a partner with Mr. Hartigan?

A. Mr. Hartigan gave me the money, and he put that in Miss Downey's name.

Q. She was in authority there?

A. It was his money.

Q. He would have the right to take one of these money orders?

A. No, sir.

Q. In blank?

A. No, I never gave them to anyone. I would not do that. I was not responsible for that.

Q. His writing does not appear on any one of these?

A. Not on one—I defy anybody to find—anybody else in there, except myself—Miss Downey and myself.

Q. You are still unable—strike that out.

Mr. Miller: Q. If that is true, how about this check which we have just shown ou?

A. I might say—

Q. Was that your statement, right now, it must be either yourself or Miss Downey's?

978 A. You will have to have a signature expert, then—I do not know. You cannot prove it by me.

A Juror: Q. Do you know if Miss Downey ever took any of those money orders, when Mr. Hartigan was in the office—if he was in the office—if Mr. Hartigan put the names in them?

A. No, sir, never.

Q. You do not know of that?

A. No, sir.

Q. Is it possible she could have done it, and you do not know that she did it?

A. It could be possible, but I am almost certain it never has been done.

Mr. Plunkett: Q. The reason you suggested Mr. Hartigan had something to do with the checks of Mr. Johnson, is because you knew that Mr. Hartigan was a lieutenant of Mr. Johnson?

A. I could not say he is a lieutenant of anybody. I know Mr. Hartigan, and I know him for many years—I know him a good many years. That is how I got into this business.

Q. Is it not the common fact that he worked for Mr. Johnson?

A. I do not know.

979 Q. Have you heard it so said?

A. No.

Q. Do you know it to be a fact?

A. No, I do not know it to be a fact.

Q. What has Mr. Hartigan told you about his business?

A. Not a thing. We did not speak about that.

Q. You are not his partner in this enterprise?

A. I am a partner with him in the Lawrence avenue Currency Exchange. And that is all.

Q. Did he tell you you would get his business?

A. Yes, sure.

Q. Did he tell you it was his business?

A. Yes, sure.

A Juror: Q. If it was not Miss Downey's writing on this check, then it must have been yours?

A. I have looked at it—but I did not write it, I am sure.

Q. You said no one else besides yourself and Miss Downey wrote on these checks?

A. That is right.

Q. Then, if it is not your writing it must have been hers?

A. It would have to be either one of the two, that is right.

980 Mr. Plunkett: Q. What did you do with the profits from this enterprise, Mr. Brown?

A. We divided it. I took out my money, and I gave her what I thought she was entitled to, I took a little more, because I thought that being in this business that I had all of the headaches.

Q. That was your share?

A. I think that one time when we were in the office, we made a little profit from it, and I think I stated before it was about \$2,400, for the time we were in business.

Q. What was your percentage of the profit?

A. I would say about two-thirds.

Q. And you say that your division in that enterprise amounted to \$2,400?

A. About that, approximately.

Mr. Campbell: Q. Did you draw a straight salary?

A. No, she drew \$20 a week, and I drew \$35 a week.

Q. And you say that was because of her not knowing anything about the business?

A. After all, it was up to me to conduct that business.

Q. She was on a salary from the beginning of the enterprise?

981 A. No, neither of us took any money in the business, because we tried to build it up—to build up our capital in case we had losses, so that we would not be caught short.

Q. How long was it before you began taking a salary out of the business?

A. I do not know—maybe about six months.

Q. So, you went along for six months, without either drawing a salary?

A. That is right.

Q. And then, you drew \$35 a week, or a month?

A. \$35 a week, and she took \$20 as a salary.

A Juror: Q. Was the profit of \$2,400 over and above the salary—or was the salary included?

A. The \$2,400 included all of it, the only difference was

when we closed up, I drew the—I tried to proportion the salaries which each took. In other words, she got her salary at the end.

Mr. Plunkett: Q. Did you give back to Mr. Hartigan his money that he had invested or so much of it as was left?

A. Miss Downey took the money and gave it to him.

Q. You did not give it to him?

A. I did not, I did not do it personally. She took 982 it, and she personally gave it to him.

Q. How much was left when you divided the cash?

A. Well, he did not care for any profit he said, we should keep it, because we only made \$293 all the time we were in business outside of our salary.

Q. How much was left at the time you broke up the business?

A. Do you mean the total?

Q. Yes, how much did you have to divide up?

A. About \$5,900, or \$5,800—something like that. I just do not remember. I think I got \$2,900, or something like that, and she got around \$2,600, but she did not get \$2,600. I got \$300 out of that. I got about \$3,200.

Q. What did you do with it?

A. I have got it.

Q. In the bank?

A. Is not that a personal affair?

Q. Yes. Where is it?

A. Must I answer anything like that?

Q. Yes, you must.

A. That is my personal affairs. I have that right.

Q. Do you want to refuse to answer that question?

A. I think that is a constitutional question—is it 983 not, Mr. Campbell?

Mr. Campbell: Q. Do you claim your constitutional rights, on the ground that the answer to that question may tend to incriminate you?

A. I have got the money, if that is what you want to know—I can say that.

Q. Then you may answer.

A. I have it.

Q. Where?

A. At home, or other places.

Q. Where do you have that money? You have to answer these questions, Mr. Brown.

Mr. Plunkett: Q. Unless it will incriminate you.

A. Is not that personal?

Mr. Campbell: Anything is personal.

Mr. Plunkett: All of this is personal—all of these questions have been personal.

A. I mean, what money I have, and everything?

Q. The money that you have just stated came from this business, which is under investigation. We want to know where it is.

A. I have paid a lot of debts, and I have some of the money at home.

Q. Do you have that in a bank?

984 A. No, sir.

Q. Did you put any of it in a bank?

A. No, sir.

Q. Is it in a safe deposit box?

A. Not much of it left.

Q. Did you put any of it in a safe deposit box?

A. No, sir.

Mr. Miller: Q. How much capital did you originally invest in this business, Mr. Brown?

A. I figure I put in about \$2,600.

Q. Do you know—or did you keep any record of it?

A. The books show it, right there. I can give it to you there. I am not carrying it around with me.

Q. What was your original agreement with regard to the division of the profit, if any?

A. Well, at first, we thought we would split evenly, and then afterward, after I talked it over with Mr. Hartigan, I thought I ought to have more than she had.

Q. Was that because of you experience?

A. (No answer.)

Q. Is that why you ultimately, in the final division of the profits get 66 and a fraction per cent, as against Ber-
985 nice getting 33 and a fraction?

A. Yes, sir.

Q. Does that represent the investment that was originally made, the same proportion?

A. It represents the capital, plus the salaries, divided proportionately 66 and 33 per cent, and that would make up that difference, plus whatever profit was left over, after we divided the money. In other words, say I would have \$300 left over, as real profit from the business, outside of our salaries, I took that, plus my machinery and fixtures.

A Juror: Q. How much salary did you receive?

A. \$35 a week.

Mr. Miller: Q. Have you seen Grand Jury Exhibit 19?

A. Yes, sir.

Q. Tell me what that is.

A. That is the auditor's report of our business, earnings, expenses, from the time we started, until we closed out.

Q. Who made the report?

A. C. F. Bagshaw.

Q. What individual in the employ of C. F. Bagshaw examined the books?

A. Mr. Bagshaw himself?

986 Q. All of the information contained in this report was taken from the books, is that correct?

A. That is correct, exactly.

Q. And the original books from which this information was obtained have been burned—is that also correct?

A. That is correct.

Q. Directing your attention again, to October 13, 1938, and to check No. 1563, in Grand Jury Exhibit 17—were you present in the currency exchange that day?

A. What date was that?

Q. October 13, 1938.

A. I believe I was.

Q. Do you know whether you were there or not?

A. Well, I am sure. There may have been some days when I was away, ill, something like that, I cannot recall.

Q. Were you there on October 13, do you know?

A. I do not know. I could not say.

Q. I show you check numbered 1562, drawn on October 13, 1938, and ask you to describe that, and to tell me in whose handwriting that check is.

A. That is my handwriting.

987 Q. Describe that, please.

A. That is check payable to J. H. Cooper, purchased by H. E. Osterberg for \$12.07.

Q. That is in your handwriting?

A. Yes, sir.

Q. You have previously described check 1563, as being the handwriting of—

A. Miss Downey.

Q. Miss Downey, is that right?

A. That is right.

Q. I show checks 1564, 1564, 1566, 1567, and 1568—all

of which are dated October 13, 1938, and ask you to state in whose handwriting the checks are.

A. This handwriting is mine. This is one—well, these were all made by me.

Q. Can you explain that?

A. Yes, surely.

Q. How was check 1563, in the middle of these others, written by Bernice Downey?

A. Oh, we had two windows and we both worked, one at each window, and when we got busy—

Q. Were you working on the same group of checks, or did you have separate checks for the separate windows?

988 A. Sometimes she would issue a check, and she would call for a bunch, and then we would use them consecutively, and then, I would take a check. I may have issued one check, and she may have issued one check at the same time. There might be a skip in the number, too.

Q. It did not occur to you that Mr. Johnson might have come in, and on that day you had asked Bernice Downey to write the check, did it?

No, sir.

M. Plunkett: Q. Did I understand you to say, Mr. With- ss, that you did not know Mr. Wait?

A. Who?

Q. Ed Wait?

A. No, sir, I do not know him, sir.

Q. You have no idea who he is?

A. No, sir.

Q. Can you tell us the circumstances under which you drew up that check, No. 1312, dated September 17, 1938?

A. Somebody may have come in and purchased it.

Q. Have you no recollection of it?

A. No, sir.

Q. Do you know that Mr. E. H. Wait runs the Bon
989 Air Country Club?

A. No. You know, they sometimes come in there, and I saw his name on the bill.

Q. When did you write that check—did you write it in the book at the same time?

A. Not necessarily.

Q. When did you do it?

A. Maybe at the end of the day.

Q. Just hold that check a minute. Directing your attention to your record of checks drawn under date of Sep-

tember 17, the record of that particular check that I have just asked you about—

A. Yes, sir.

Q. And I find under date of September 17, Public Service Company of Northern Illinois, E. H. Wait—do you know what Lincoln T. means?

A. Probably Lincoln Tavern.

Q. Why was that written on there?

A. That is probably the way the bill was headed—the electric bill, and they brought in that electric bill, to make out the money order. That is how those things come in.

Q. Was E. H. Wait running the Lincoln Tavern?

A. I could not say, sir.

990 Q. You do not know?

A. I have never been around, to find out. The people bring these things in, and we would issue them for whichever way they tell us to.

Q. But you have no record now of the request for this check?

A. No, sir.

Q. Do you know Mr. William P. Kelly?

A. Yes, sir.

Q. Do you remember selling him checks?

A. Yes, he sent in, to buy checks to pay the electric bills, and they give us the bills, whatever they have to pay.

Mr. Plunkett: That is all, right now.

Mr. Campbell: Mr. Brown—

A. Yes, sir.

Q. —you were cautioned that all of this which has transpired here is in secret, and is not to be divulged?

A. Yes.

Mr. Campbell: You will be excused until 10:15 tomorrow morning, at which time you will please reappear.

The Witness: You bet.

991 Mr. Campbell: For further examination.

The Witness: Yes, sir.

Mr. Campbell: That is all at this time.

(Witness excused.)"

Mr. Thompson: Now, if the Court please, having heard this document read, I move to strike all reference of any character to Mr. William R. Johnson as being hearsay and having no materiality to any—well, as being hearsay, that is the ground.

The Court: Motion denied.

JESSE G. ROBERTS, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Jesse G. Roberts. I live at Park Ridge, Illinois. I am assistant cashier at the Federal Reserve Bank at Chicago since 1920. I have been with the Federal Reserve Bank going on twenty-six years. I am responsible for the cash operation of the bank. The

Federal Reserve Bank meets the requirements of our member banks on demands for currency.

The Central National Bank of Chicago was a member bank of the Federal Reserve System during the year 1938 and '39, which came under my supervision and direction in my position with the Federal Reserve Bank. When currency was sent out to the Central National Bank we kept a record, by denominations, and that record is kept permanent at the bank. Those records are kept under my supervision and direction.

Government's Exhibit X-217-A to D, inclusive; X-218-A to D, inclusive; X-219-A to H, inclusive; X-220-A to H, inclusive; X-221-A to I, inclusive; X-222-A to I, inclusive; X-223-A to P, inclusive; X-224-A to Y, inclusive; X-225-A to R, inclusive; X-226-A to B-1, inclusive; X-227-A to X-227-X; X-228-A to X-228-Z, inclusive; X-229-A to X-229-Y, inclusive; X-230-B to X-230-Y, inclusive; X-231-A to X-231-Z; X-232-A to X-232-R; and X-233-A to X-233-Q, are part of the records kept under my supervision and direction as assistant cashier of the Federal Reserve Bank of Chicago, relating to currency shipped out to the Central National Bank of Chicago covering the period of June 1, 1938, to October 1, 1939. Those exhibits which I have enumerated designate the denomination of the currency sent to the Central National Bank of Chicago on the dates appearing on those exhibits. I have made a summary of the number of one-hundred dollar bills that were sent to the Central National Bank in the months including the month of June, 1938, to and including the month of October, 1939. I can tell from an examination of that summary the number of one-hundred dollar bills that were sent to the Central National Bank by the Federal Reserve System, starting in the month of June, 1938.

993 Q. Will you state, please, what the number of those bills were that were sent by the Federal Reserve to the Central National Bank during the period I have designated?

Mr. Thompson: We object to the testimony as immaterial and tending in no way to prove the taxable income of the defendant Johnson and as hearsay to all of the defendants and certainly to all of them except the defendant Brown, and as having no proper foundation laid for the reception of any such testimony,—no foundation that the number of one-hundred dollar bills sent out by the Federal Reserve to the Central National, has any relation to the number of one-hundred dollar bills that any of these defendants ever received for anything.

As I recall it the Currency Exchange did not become a client of this bank until a later period than that indicated, is another point.

Mr. Hurley: Covering the period slightly in advance of the opening of this account with the Lawrence Avenue Currency Exchange and the Central National, for the purpose of showing the rise in the number of one-hundred dollar bills which were required by the Central National, which connect up with the opening of this account.

The Court: Overruled.

The Witness: The month of June, 1938, is \$25,000.00;

July, \$20,000.00; August, \$75,000.00; September, \$40,994 000.00; October, \$50,000.00; November, \$60,000.00; December, \$185,000.00; January, 1939, \$240,000.00; February, \$180,000 00; March, \$300,000.00; April, \$250,000.00; May, \$285,000.00; June, \$255,000.00; July, \$240,000.00; August, \$275,000.00; September, \$165,000.00; October, \$155,000.00.

Those figures I gave you were in hundred dollar bills.

Mr. Thompson: We move to strike the evidence as immaterial and tending in no way to prove the taxable income of the defendant Johnson and too remote from any connection whatever with any defendant in this case.

The Court: Denied.

Mr. Thompson: And hearsay as to all of them.

The Court: Denied.

LILLIAN DOWNEY, being sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 1308 North Mayfield Avenue. I have a sister, Bernice Downey. I live in the same home with her. On Saturday I was served with a subpoena in this case.

Q. And that subpoena was served on you to produce 995 general ledger, cash books, general journal, cash register, tellers' blotter sheets, bank statements, canceled checks, and all other books, papers, records, documents, correspondence, memoranda, reflecting all the transactions had by or through Bernice Downey and Stuart Solomon Brown, doing business as Lawrence Avenue Currency Exchange at 3424 Lawrence avenue, Chicago, Illinois, for the period commencing June, 1938, to and including November, 1939. You were served with a subpoena covering those documents, were you not?

A. That is right.

Q. To produce those documents here in court, as it says, "forthwith." Do you now produce those records that you were called on to produce?

A. I haven't any records.

Cross-Examination by Mr. Thompson.

I never did have any connection with the Lawrence Avenue Currency Exchange. I did not ever see any of these books that have been read off to me, in this long list. I never had any connection with those books in any way.

Mr. Thompson: We move to strike the testimony of the witness on the ground that it is altogether immaterial and that it is unfair to insinuate that this witness ever had those books without any foundation for it.

The Court: Do you know where those books are?

The Witness: No, I do not. I don't know anything about them.

The Court: Motion denied.

996 BERNICE DOWNEY, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 1308 North Mayfield Avenue. I am the same Bernice Downey who worked in the Lawrence Avenue Currency Exchange with Mr. Brown. I worked there from the time it opened until the business closed.

I was served with a subpoena to produce certain books and records of the Lawrence Avenue Currency Exchange.

Q. And that subpoena specified that you produce the general ledger, cash books, general journal, cash register, tellers' blotter sheets, bank statements, cancelled checks, and all other books, papers, records, documents, correspondence, memoranda, reflecting all transactions had by or through Bernice Downey and Stuart Solomon Brown, doing business as Lawrence Avenue Currency Exchange, at 3424 Lawrence avenue, Chicago, Illinois, for the period commencing June, 1938, to and including November, 1939, those books to be produced here in court.

A. That is what mine said.

The Witness: I do not have any books and I never had any books. I don't have the books that you read off in this list that I was asked to produce.

I am the sister of Lillian Downey.

Mr. Thompson: Move to strike the testimony. It is altogether immaterial. Insinuating that this witness had any possession of the books or ever had any.

The Court: Motion denied.

Examination by the Court.

I never had any of them. I last saw them in the currency exchange in 1939, when the currency exchange closed. That was the last I saw of them. I did not see any of them after the currency exchange closed. I do not know
997 where any of them are. I do not know where any of them have been since the currency exchange closed.

BENTLEY H. MOORE, a witness on behalf of the Government, having been previously duly sworn, was examined and testified further as follows:

Redirect Examination by Mr. Plunkett.

My name is Bentley H. Moore. I have previously testified in this case. I am employed by the Illinois Bell Telephone Company. My position there is local commercial manager.

Government's Exhibits T-4 to T-36, both inclusive, are service application cards and contracts for telephone service for the subscribers whose names are shown on them. They are official records of our company, made in the usual and regular course of business. It is the usual and regular course of business for the Telephone Company to make such records and to make entries thereon at or about the time the transactions occur. These records are made in the form of abbreviation and code system.

Q. Handing you Government's Exhibits T-4 to T-9, both inclusive, will you state what telephone number those contracts refer to?

Mr. Thompson: If the Court please, before anything is read from contracts, or any testimony taken from them, we desire to have a foundation laid that will admit these contracts into evidence. It has not been now so laid.

Mr. Plunkett: He stated they are in the form of an abbreviation and code system. The only way I can show what they refer to is for him to testify to them.

The Court: What are they?

Mr. Plunkett: This first group consists—will refer 998 to 4301 Harlem Avenue, the Harlem Stables, the telephone contract at this place.

The Court: Overruled.

Mr. Plunkett: What is the telephone number, to which those refer?

Mr. Thompson: We should like to ask the witness a few questions before he testifies from these records, to see whether or not he knows anything about these records.

The Court: Very well.

Cross-Examination by Mr. Thompson.

I am not a bookkeeper over at the telephone company. I am a manager. I have very little to do with keeping

books, but I have supervision of maintaining records such as these. At the present time I am manager at 5100 North Clark Street. I worked at 4028 Irving Park Road from about January of 1934 until August of 1939. Some of these records are from that office at 4028 Irving Park Road. There are cards here for 4301 North Harlem. They are in the particular district governed by 4028 Irving Park Road.

There are cards here for 4721 North Kedzie, also handled by that particular district. There is a card here for 6430 North Drake, which, because of the type of service involved, is handled in that particular district.

There are cards here for 4715 West Irving Park Road, which are handled by that district.

There are other cards here for 6245 South Cottage Grove Avenue, not handled in that district, but exactly the same type record.

9730 South Western Avenue, not coming under the supervision of that district, but, again, it is the same type of contract.

999 Q. Do you know anything about these transactions represented by these cards, except what appears on the cards?

A. Only what appears on the records. I have no personal knowledge of the matter at all. I can't identify the handwriting of the subscriber. I don't know who signed any of these cards.

Mr. Thompson: We renew our objection that the foundation has not been laid for receiving the cards in evidence. They are not yet in evidence, and if and when they are, they will speak for themselves. We object to the witness testifying from the documents.

The Court: Overruled.

Mr. Plunkett continues direct examination:

The telephone number to which those cards refer is Kildare 9445. The records show that the telephone number was originally located at 4327 North Harlem and moved to 4301 North Harlem. That was a record change, only. It appears in our records as a move. It appears that we had 4327 incorrectly and changed the address, for our records only, to 4301 North Harlem Avenue. There was no actual change of equipment. No equipment was moved. This contract appears under the name of Jack Sommers.

Mr. Thompson: If the Court please, we want to object

to that as being hearsay as to all of these defendants except Jack Sommers, and not being identified as to Jack Sommers, the witness having testified that he can't identify the signature.

The Court: Overruled.

Mr. Thompson: If I may ask, your Honor, will all of these objections stand to each of the questions, so I shall not have to interrupt again, and the same ruling on them?

The Court: Yes.

1000 The Witness: It was installed under the name of Jack Sommers on 8/24/36, and then taken over under the name of Earl Jackson. There appears a change in the name of the subscriber thereafter. There was a change from Jack Sommers on April 21, 1939 to James Hartigan.

These contracts were for ordinary business service. There were two central office lines involved. We refer to them by means of the first number of the group, Kildare 9445. The other number was Kildare 9446.

I have been testifying from Government's Exhibits T-4 to T-9, both inclusive. All of these Exhibits refer to that contract.

The Government's Exhibits, T-10 and T-11, refer to Pensacola 6690. 4301 North Harlem Avenue is shown on the record as where Pensacola 6690 is. This contract appears under the name of James Hartigan. That was installed in that name of August 11, 1939.

Government's Exhibits T-12 to T-16, both inclusive, refer to telephone number Juniper 1818. That is located at 4721 North Kedzie Avenue. That contract appears to have been first made on March 13, 1935, under the name of James A. Hartigan. The location of the telephone at that time was at 4721 North Kedzie Avenue, second floor. The service was discontinued on December 7, 1938, and re-installed on December 12, 1938.

After that there was a change in the name of the subscriber to Jack Sommers on December 20, 1938. These exhibits refer only to Juniper 1818. On this contract for service there was only one central office line.

Government's Exhibits T-17 to T-19, inclusive, refer to Juniper 2420. That was located, at the time of the installation, at 4721 North Kedzie Avenue, first floor. That contract first appeared under the date of December 21, 1001 1938. The contract shows who was the prior subscriber. It shows that the name Jack Sommers super-

seded that of James A. Hartigan. The name of Jack Sommers first appeared on that telephone contract December 21, 1938. Prior to that our records indicate that it was under the name of James A. Hartigan.

These records indicate that there was a change of address from the first floor at 4721 North Kedzie to the second floor at 4721 North Kedzie Avenue. That change took place May 15, 1939. While the telephone was on the first floor of that address the contract shows there were two central office lines, Juniper 2420 and Juniper 2421, and that there was a portable telephone and one jack for the use of that portable telephone—also a wiring arrangement.

After the phone was shifted to the second floor at that same address this portable telephone and wiring arrangement was taken out, the two central office lines remaining.

Government's Exhibits T-20 and T-21 refer to telephone, Irving 2040, located at 6430 North Drake Avenue, first floor, Lincolnwood, Illinois. That contract was issued July 2, 1938. The contract does not show whether or not the subscriber listed thereon superseded any other subscriber. Apparently this was a new installation from the type of order that was issued.

On December 21, 1938, service was put on suspended rate or half rate service, and discontinued, and calls were referred to Juniper 2420. The bills during this suspension were mailed to 4721 North Kedzie Avenue, first floor, and this suspension service was discontinued on June 2, 1939.

The suspended rate on this particular class of service is half rate service, and the service is completely discontinued for incoming and outgoing calls. The telephone can't be used for service on this half rate. The half rate is charged just for the purpose of reserving the telephone number.

1002 Government's Exhibit T-22 refers to telephone number Tower 1525, formerly at Tessville. Tower 1525 is located at 6440 North Drake Avenue, first floor, Lincolnwood, Illinois. This contract was issued on June 23, 1938. It appears under the name of Jack Sommers. This service was put on the suspended rate basis on January 6, 1940, and apparently was placed immediately back on the full rate basis. It appears on the same date.

Mr. Thompson: Now, if the Court please, I want to add to my objection that there is no connection of defendant William R. Johnson, with any of these transactions; it is

hearsay as to him. Furthermore, none of these documents are in any way material, nor is the testimony being given from them. This evidence tends in no way to prove the taxable income of the defendant Johnson, or any attempt to evade the taxable income. We move to strike the testimony already given, and object to any further testimony from these documents on those grounds.

The Court: Motion denied, and objection overruled.

The telephone number appearing on the records, Government's Exhibits T-23 and T-24, is Kildare 9821. That telephone is located at 4715 West Irving Park Road, first floor. This contract was installed under the name of the customer appearing on this record, Reginald E. Mackay, on June 2, 1937. The contract shows that subscriber superseded Garrett Meade on June 2, 1937. The contracts, Government's Exhibits T-25 and T-26, refer to telephone number Kildare 3571, located at 4715 Irving Park Road, first floor. That appears under the name of Reginald E. Mackay, under date of June 2, 1937, superseding Garrett Meade.

Government's Exhibits T-27, T-28 and T-29, refer 1003 to the same number I have just been testifying about,

Kildare 3571, at the same address. These records show that the customer was Garrett Meade.

Government's Exhibit T-28 shows the change from Reginald E. Mackay to Garrett Meade. This particular record is signed on June 1, 1937. The change was made from Garrett Meade to Reginald E. Mackay.

The contracts covering these exhibits, T-30 and T-31 originally referred to Dorchester 0875. There were subsequent changes of telephone numbers, until the last number which is shown is Midway 1303. That telephone was located at 6245 South Cottage Grove Avenue, the second floor. The first service installed according to these contracts was November 3, 1933. That service appears under the name of Andrew J. Creighton. There were several changes of the telephone number, to which I have referred. There was a discontinuance of one of the central office lines. There was more than one line in use here. The original there was Dorchester 0875 and 0876 in use, and on November 26, 1935, the second line was discontinued. That was later put back again, under date of March 24, 1936.

The character of the equipment installed on these premises was ordinary exchange service, central office service.

Later on, on December 27, 1938, there were two extensions added according to this record, one on Midway 1303 and one on Midway 1304. According to this record all the extensions were in the same premises.

Q. Is there any record there of an unauthorized extension of any kind?

Mr. Thompson: We object to that.

1004 The Court: Let him answer.

The Witness: Yes. There is a record here. Well, I will read this notation—

Mr. Thompson: If the Court please, we object to reading any notation. It is hearsay.

The Court: You propose to introduce these?

Mr. Plunkett: Yes, we do.

Mr. Thompson: Apparently that has to do with some charge that somebody who had this telephone stole some telephone service or something, unauthorized extension. It is proof of an entirely independent act and could have no possible connection with the amount of the income tax that Mr. Johnson owes. It is hearsay as to everybody—

The Court: You are instructed that the word unauthorized should be put out of your mind. There is some sort of service there that was not theretofore indicated on the card. Objection overruled. Tell us.

The Witness: There was an order issued, order out, closed by police.

The Court: Q. What?

A. "Order out, closed by police".

The due date, the billing date. "Mail official bill to same address. Do not cancel or connect without referring to the local manager. Telephone unauthorized extension from 6245 South Cottage Grove Avenue to 6241 South Cottage Grove which was closed by police."

Mr. Thompson: Now we move to strike that as hearsay and prejudicial and no connection with any defendant in this case.

The Court: Overruled.

Q. By unauthorized, you mean one that has not theretofore been contracted for?

A. Yes, sir, not shown on our records.

1005 The Court: That is the only meaning you are to give to it, ladies and gentlemen. Has not theretofore been contracted.

Mr. Plunkett continues examination:

The contract, Government's Exhibit T-32, refers to Plaza 2435, later changed to Midway 4810. That telephone was originally located at 6245 South Cottage Grove Avenue, on the first floor. That appears under the name of Andrew J. Creighton, installed on August 25, 1936. There were some extensions added. One extension was added on April 6, 1937. Two more extensions were added on July 30, 1937. These extensions ran into a key cabinet on Hyde Park 7802 on the same premises. There were also some changes of address, one on November 28, 1936 to 6245 South Cottage Grove Avenue, the second floor; another change of address, April 6, 1937, to 6245 South Cottage Grove Avenue, the first floor.

The contracts, Government's Exhibits T-33 to T-36, both inclusive, refer to Cedarcrest 0640, and 41. The address of that telephone number is 9730 South Western Avenue, the first floor. That was first installed on July 27, 1937, under the name of Andrew J. Creighton. There are numerous changes in this service. There were additions of some extensions; one on June 12, 1939, the date is not shown on the subsequent extension, what date it was actually completed; but our records show that an order was issued on June 14th. The service was finally ordered completely disconnected on December 5, 1939.

The symbols on Government's Exhibit T-34, under date of June 21, 1939, is an order issued to correct a previous order a change of location of two central office lines and the appointment date is June 20, 1939, before 10:30 A. M. See Mr. Gitzen for location.

Q. Now, as to all of these exhibits which you have been shown Government's Exhibit T-4 to T-36, can you 1006 state whether or not any one of these telephone numbers were ever published in your directory?

Mr. Thompson: We object to that as immaterial. I do not know what that has got to do with this law suit.

The Court: What difference does it make?

Mr. Plunkett: I think that is a part of the contract, if the Court please.

The Court: Let him answer.

The Witness: Our records show that one telephone, that is, Towers 1525 had a listing on one occasion, from June 23, 1938, to July 6, 1938, of the Dev-Lin Club, with the designation of "Restaurant".

At other periods of time covered by that Towers 1525

contract it was not published. None of the other contracts were ever published at any time, according to these records.

Mr. Plunkett: The Government will offer GOVERNMENT'S EXHIBIT T-4 to T-36, both inclusive.

Cross-Examination by Mr. Thompson.

I do not know whether the Mayor's telephone at his residence in Chicago is in the telephone book. There are many private telephones that are not published in the telephone book, for reasons which the subscriber may or may not assign. It is none of our business whose names are published in the telephone book.

This card indicates that a hand set telephone was installed at this Tessville 'Phone. It is a cradle type of telephone, sometimes called the French telephone, where the 'phone receiver and transmitter are both on one piece that lies across the top of the base. It was not a dial phone in that territory. I do not think there was any in that territory at that time.

1007 The instrument at 4301 North Harlem Avenue was a cradle hand set, no dial telephone.

At Juniper 1818, at 4721 North Kedzie Avenue, that had a hand set, no dial telephone.

Telephone Juniper 2420 at 4721 North Kedzie Avenue had hand sets on the two central office trunk lines, a hand set on the portable instrument, which carried a plug ended cord. No dial service there. There is not any dial service in that neighborhood.

It is not customary to write gossip on these records.

Q. Well, what about this closing this place out here on account of police raid? How does one get that information?

A. That was, we received an order through our organization to order it out for that reason.

It comes through our organization, through a certain channel to us that it is closed by the police. The name of the representative who wrote here on this card I do not know. It was some one employed in that office. I do not recognize the hand writing. I do not know where that person got the information which is the foundation for the entry on that card. I don't know whether that particular address was ever raided by the police or not. I do not know of my own knowledge that there ever was any unauthorized telephone service in there other than what is

written on that card. The address on the card about which we are talking is 6245 South Cottage Grove Avenue, the second floor. I don't know what business is operated at that address. The date of the entry on this card about the police raid is shown as December 13th, but the year does not appear. The record indicates that on December 13th, some year during the period covered by that card, there was a police raid. It reads, "Ordered out account closed by police. Bill to December 13th. Mail final bill to the same address. Don't cancel or connect without re-1008 ferring to local manager. This telephone has an unauthorized extension from 6245 South Cottage Grove to 6241 South Cottage Grove which was closed by the police." Initials of the representative and the date, December 12th.

I don't know who wrote any part of that on there. I don't know where the information came from to the person who did write it on there.

Q. I assume you know nothing about who was the proprietor of these various places at the time these phones were put in and taken out?

A. I only know the name of the customer. The name of the customer is shown on here.

When a phone is transferred from one customer to another I don't know whether there has been any other transaction at or prior to that date respecting the change of ownership of the property. I merely know the request was made to change the telephone. I wouldn't know from those records that Mr. Mackay bought out Mr. Meade and took over his place of business, on or prior to the date of the change of that telephone.

Mr. Thompson: We object to the exhibits on the ground, first, that there is no proper foundation laid for their authenticity or for their receipt in evidence in this case, they are altogether immaterial to any issue in this case, do not tend to prove the taxable income of the defendant William R. Johnson for any year, much less the specific years mentioned in this indictment, and do not tend to prove the action of other defendants with respect to aiding or abetting the defendant Johnson in evading the payment on any income; and particularly we object also that they are hearsay as to the defendant Johnson, and there is no showing that he is in any way connected with any of these transactions, and that they are hearsay as to each and every of

the other defendants, excepting only to whoever participated in the transactions, and as to them there is no identification that any defendant ever participated in them.

The Court: Overruled. They may be received.

(Said exhibits, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS T-4 TO T-36, inclusive.)

PAUL UPDYKE, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live at 8619 Engleside Avenue. I am employed by the Collector of Internal Revenue since May, 1935, in the capacity of an auditor. I have been an auditor during the period of my employment there. I help audit income tax returns, decide what returns should be questioned, and when people are called in on the return I interview the taxpayer, in regard to the items of income and deductions.

I have seen Government's Exhibit R-14, for identification, before, in the office of the Collector of Internal Revenue, in the course of my duties in the office of the Collector.

I talked with William Brantman with regard to Government's Exhibit R-14, the income tax return of William P. Kelly. In some way it was decided that the items of deduction should be investigated and a call letter was sent to the taxpayer. He was asked to appear in the office of the Collector of Internal Revenue in connection with the audit of his income tax return. Subsequent to that letter going out I talked to Mr. Brantman in my office. The date that he appeared is on the return. I have written the notation there, November 25, 1935. That was with reference to the return of Kelly for the calendar year of 1934. I

think that the pencil writing behind the word "Occupation" is mine. I am not positive. As to the other pencil notation in answer to question 4, that is my handwriting, and as to the pencil notations between items 8 and 9, the two lines, that is my handwriting, and also the notation written under the date 11/25/35 is my handwriting.

The initials "P. U." are in my handwriting.

These notations were placed on there in the presence of Mr. Brantman that I speak of.

Q. And from whom did you get the information to write

those notations on the face of that return, Government's Exhibit R-14?

Mr. Thompson: We object to all this as immaterial;—

A. From Mr. Brantman.

Mr. Thompson (Continuing): —in no way binding on any of these other defendants, certainly.

The Court: Overruled.

Mr. Hurley: Q. Did Brantman tell you the occasion for his being in your office?

A. Well—

Mr. Thompson: We object to it as hearsay, if he did.

Mr. Hurley: This connects up, your Honor, with the evidence and the testimony of Brantman; if you will recall, he said that Kelly sent him in in response to this letter with regard to his return.

The Court: Objection overruled.

The Witness: Mr. Brantman said that he did the accounting for the employer of Mr. Kelly.

Mr. Thompson: We move to strike that answer as hearsay, and immaterial to any issue in this case, certainly no authority for Brantman to speak for anybody. An 1011 agent can't prove his authority by his own statements.

There has been no evidence in this case that Brantman was the agent of anybody.

The Court: The last answer of the witness is admissible only against the defendant Kelly; it is not admissible and is not to be considered as against any of the other defendants. It is admissible against Kelly.

The Witness: At the interview with Mr. Brantman I discussed the figures on this return and the notations to which I had testified were made during the course of this interview. Mr. Brantman has been in our office on other income tax returns. I got the information to make the notations to which I have testified to from Mr. Brantman.

Cross-Examination by Mr. Thompson.

I wrote everything on that sheet of paper that is written there in lead pencil, except one word which, as I have said before, I am not positive about. That word is "Gambling". I don't know whether I wrote the word "Gambling" or not. I wrote all of the rest of the matter written in lead pencil and the source of my information was William Brantman. I never talked to Mr. Kelly and I never talked to any of the rest of these men around the defense table here.

This conversation with Mr. Brantman was on November 25, 1935, and I was then examining with respect to the income tax return for Kelly filed on the 15th of March, 1935, for the year 1934. I had no word from Kelly that Brantman was his agent or had authority to speak for him.

There would be a great number of conferences I 1012 had in 1934 with respect to income tax returns.

I devote my full time to auditing income tax returns. The only returns that I and the other auditors in the local office audit are those where the income is less than \$5,000.00. The others are audited by the Internal Revenue agents outside of the Collector's office, another division of the Treasury Department.

Mr. Brantman came in to my office many times, representing many different clients. At that time I had been there about six months. Mr. Brantman had been coming in quite frequently even during that short period of six months, and subsequently he had been coming in frequently, clear down to the present time. I have had many conversations with him. I wrote down on this sheet what I thought was necessary to establish the right of Mr. Kelly to make the deductions he had. I made the notations so that any one who looked at the return subsequently might know why the deduction was taken, why I made the audit and approved the deduction, so that what I wrote down there was as much of a conversation as I thought satisfied the requirements that would allow this deduction from his income tax return. I don't know whether this word "Gambling", up at the top, was written in before or after the audit. I am not even positive that is not my own handwriting. "One mother" after the question, "How many dependents" is in my handwriting. I didn't write the word "salary" after the statement, "Miscellaneous commission earnings". That was on the return when it came to me. The notation "11 25 '35, case closed. No change. P. U."—"P. U." are my initials. The notations were made on here for the purpose of allowing him to take his personal exemption.

Mr. Hurley: I offer this in evidence, if the Court please.

GOVERNMENT'S EXHIBIT R-14, for identification.

1013 Mr. Thompson: We object to the offer on the ground that it does not establish that even Mr. Kelly authorized any of these statements that are on there. The truth of the statement is not established in any way by any

competent evidence, and as to Mr. Kelly, we object on the ground that it is unauthorized and hearsay statement; as to all of the other defendants, it certainly is unauthorized and hearsay. We feel that by no instruction can the Court possibly protect the other defendants from the evil effect of that statement written on there by somebody.

I think we already have our general objection to this document, previously, that it is immaterial to any issue in this case.

The Court: It may be received, exclusive of the pencil writing thereon—

Mr. Hurley: You mean, delete that?

The Court: No; in respect of Government's Exhibit R-14, which purports to be a return, individual income tax return of the defendant William P. Kelly, for the calendar year 1934, the jury are instructed to disregard the pencil writings on that exhibit; they are not in evidence. You are to disregard them entirely.

The Court: The defendants indicate they desire those pencil writings erased, and the Government indicates they may be erased.

(Said document, marked GOVERNMENT'S EXHIBIT R-14, is received in evidence.)

Mr. Thompson: Well, of course, our desire to erase is no waiver of any objections to the exhibit, to the materiality and so on. Of course, it does eliminate our other point.

HENRY LEVINE, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

1014

Direct Examination by Mr. Hurley.

My name is Henry Levine. I live at 6528 North Mozart Street. I am an internal revenue agent and have been for six years and four months. Before that I was a clerk in the Internal Revenue Bureau in Washington for three years and nine months. I have been assigned to this district for six years and four months. As an Internal Revenue Agent my duties consist of investigation of income tax returns of taxpayers whose gross income exceeds five thousand dollars, with special reference to cases involving avoidance or evasion. My superior is Louis H. Wilson. His office is located at 1100 Bankers Building.

I was assigned to investigate the income of one James A. Hartigan by my superior, Louis H. Wilson, about December, 1939, in connection with the years 1935 to 1938, inclusive. I talked to Hartigan with regard to that investigation on December 28, 1939, in Room 284, United States Court House, this building. I know the defendant Hartigan (indicating defendant Hartigan). Special Agents Converse and Sommers were present at the time I talked to him. Mr. Sommers and Mr. Converse interviewed Mr. Hartigan and the stenographer made a transcript of the testimony.

Government's Exhibit O-209, is a transcript of the statement taken of Hartigan at that time and place that I have indicated.

I talked to Hartigan officially after that on or about the first of February, 1940, in my office, with a number of other revenue agents in the same room with me present but not connected with the case. These other agents were not engaged in that conversation.

Q. Now, what did you say to Hartigan and what did he say to you?

Mr. Thompson: If the Court please, we object to the statement as a narration of past events and hearsay 1015 as to all the defendants, except the Defendant Hartigan. And furthermore, we call attention to the fact they already have in one statement of Hartigan, and here is the second investigation of the same thing, apparently.

The Court: Objection may be overruled as to the defendant Hartigan, and sustained as to the other defendants.

The Witness: I asked Mr. Hartigan to produce his records, which would indicate just how he arrived at certain figures reported on his income tax return. I hadn't, until that time, examined Hartigan's income tax returns for the years I have indicated, but I did examine that. I asked Hartigan for his books and records. He produced a small slip of paper taken from a note book and showed me how he had computed the income for the year 1938.

Government's Exhibit X-237, for identification, is a slip of paper taken from a note book, showing the income of \$11,500.00, plus \$20.00 dividends in stock of the Peoples' Gas Company. I got that slip from Mr. Hartigan. There were certain figures on the right-hand side of the slip showing items of \$450.00. Mr. Hartigan's explanation of the items as representing certain funds taken by himself for living expenses. In the center of the slip of paper are frac-

tions ranging from one and one quarter to two, which were explained by Mr. Hartigan as representing certain funds taken by him in excess of a bank roll of five thousand dollars. Mr. Hartigan's explanation of fractions of one and a quarter represented \$1250.00; one and a half represented \$1500.00; two represented \$2,000.00. There were no further explanations that I now recall with reference to that exhibit.

1016 On December 28, 1939, I had a talk with him with regard to records. I pointed out to Mr. Hartigan that it would be both convenient for the taxpayer and the Government if records were properly submitted. Mr. Hartigan stated that he would produce such records as existed. He produced no other records than the social security records, Government's Exhibit 237, for identification.

I went with Hartigan with reference to books or records to 5221 West Quincy Street, the home of some people by the name of Downey. That was on the first day I saw Mr. Hartigan, December 28, 1939. Mr. Hartigan took me into the back door and asked a woman occupant of the building to produce a box which contained nothing but these social security tax returns.

I don't recall any conversation other than what I have related here between myself and Hartigan at the time he delivered to me Government's Exhibit 237 for identification.

Mr. Hartigan told me that his business was gambling.

I did have another assignment other than the investigation of the defendant Hartigan's income. That was the income of John M. Flanagan. I endeavored to get in touch with Mr. Flanagan. I tried to locate him. I made certain inquiries with regard to Mr. Flanagan's personal address and where Mr. Flanagan could be located for the purpose of making a proper investigation of his income tax return. In the course of my investigation I went to 4020 Ogden

Avenue three times. I did not find Flanagan. That 1017 was over the period of one month, in January, 1940.

The type of business in 4020 Ogden Avenue was gambling. The place was not open at that time. Nobody was there. I didn't get in the building at all. I did go elsewhere than 4020 Ogden Avenue.

Q. Over what period of time did you attempt to communicate with the defendant Flanagan?

Mr. Thompson: We object to that. There isn't any chance at all to check the statement.

Mr. Hurley: I think he has a right to tell.

Mr. Thompson: It calls for a conclusion, an attempt.

Mr. Hurley: He testified that he was trying to locate him. Now, I think we have a right to show what period of time he spent on that.

The Court: Well, let him answer.

The Witness: From January 1 to about February 1, 1940.

Mr. Hurley: I will offer in evidence Government's Exhibit X-237, for identification.

Cross-Examination by Mr. Hess.

I saw Mr. Hartigan on two occasions. I have seen him unofficially on occasions. That was not with respect to his income tax. To the best of my recollection I have told you all the conversation I had about his returns for 1935 and 1938, the two times when I saw him. I don't recall that there was any conversation about Mr. Brantman. He did not ever tell me that his books were with Mr. Brantman. I never heard that, for the year 1935 or 1936. He never told me he was operating a restaurant at Kedzie and Lawrence. I never heard that. I knew then only that he was a gambler in those years. I also knew, in a general way from my conversation with him, exactly how he kept a record of his profits and losses from his gambling business.

I did not, as the Internal Revenue agent investigating these returns accept his return as made. I made certain adjustments. They were not taken care of by Mr. Hartigan. They were not protested. To the best of my recollection, he explained to me just how he arrived at those figures on the slip, Exhibit X-237, and he told me that he counted his money every month and found out how much he had more than the previous month and that less his living expenses was his income. That is what he told me. He did not swear to that before our Bureau. He did swear to the statement that I saw December 28, 1939. I don't think that statement included an explanation of how his income was arrived at, which he included in his returns.

I do recall the subject matter of his interrogation on the 28th of December. It was partially about his income tax return. On February 1st the subject matter of my interrogation was entirely about his income tax. Mr.

Hartigan told me the year that this X-237 had to do with. I saw him get that little slip from a little notebook that he took out of his pocket. I didn't see the notebook other than this slip. I did not ask to see it. I did notice that it covers 1938. I did not look at the book for '35, '36 and '37. I didn't do anything with the social security record in determining his income tax. It was of no assistance whatever because these records covered the first three quarters of 1939. I did not see the thirty-sevens and thirty-eights. Social Security records would not help me in determining what a man's net taxable income was. I had Mr. Hartigan's returns before me at these interviews that I spoke about. That was on the occasion of February 1st.

I had before me Government's Exhibit R-53 on February 1, 1940, when I was interrogating Mr. Hartigan about his income tax report. The document had the rider attached to it. I do recall that rider. I questioned him about it. That had to do with the restaurant business. I do know there was some restaurant business in connection with his returns when I talked to him on February 1st. The adjustment that I refer to as having 1019 been made did not amount to a disallowance of loss on his restaurant business. I did not disallow that loss. I believe that was shown on a prior report—prior investigation. Prior to my coming on the scene, I know the loss was not allowed, due to the fact that Mr. Hartigan did not submit any records to substantiate the deduction. I don't know whether he could produce records to substantiate the deduction or not, but he did not. He did not tell me why he could not. He did not tell anybody in my presence why he could not.

I said I have been in the Internal Revenue Bureau six years and four months and in general the duties I perform is investigation of returns that are made.

I notice from these returns of Mr. Hartigan that he has not stated here that he has been a gambler. I notice "Miscellaneous income," "Speculator," but I knew all the time that he was a gambler.

I still have in our department the Social Security books of Hartigan that were turned over to me.

Mr. Hess: I want to move to strike out the entire testimony of this witness. First, as to Hartigan, on the general ground that the complete purport of his testi-

mony touches the matter of accuracy of Hartigan's income tax return. They are not involved in this litigation; entirely immaterial to the issue that is made by this indictment; secondly, I also move to strike out every word said by the witness, all of his testimony, with respect to Flanagan.

The Court: You are offering this in evidence?

Mr. Hurley: Yes, your Honor.

The Court: It may be received as against the defendant Hartigan, only. That is Government's Exhibit X-237.

1020 (Said document was thereupon marked GOVERNMENT'S EXHIBIT X-237, and received in evidence.)

The Court: Motion to strike out the testimony of the witness with respect to the defendant Flanagan will be overruled.

Mr. Hess: How about the defendant Hartigan—I mean, as to both of them?

The Court: Denied.

PURVIS A. LAWRASON, being duly sworn, testified as follows:

Direct Examination by Mr. Hurley.

I live in Downers Grove, Illinois. I have been an internal revenue agent for twenty years. During that time I have been assigned to the Chicago district. I have been an agent in this district all of that period, with the exception of six weeks I was in Washington, training. I am assigned to the suspected fraud section of the Internal Revenue Bureau since about May, 1939. My duties in general are to verify the items on the returns as submitted and see if the income ties in with the income reported.

In that connection I was assigned to investigate the income tax return of the defendant Creighton by Louis Wilson, my superior. I was assigned for that particular duty about the middle of December, 1939.

I talked to Creighton the first week in January of 1940, at his home, 4920 West Jackson Boulevard.

Q. What did you say to Creighton and what did he say to you at that time and place?

Mr. Thompson: We object to the testimony. In 1021 the first place, Mr. Creighton's income tax is not under investigation here; secondly, it is hearsay as to all of the rest of these defendants; a narrative of past events.

The Court: It will be overruled as to the defendant Creighton, and sustained as to the other defendants.

The Witness: I told Mr. Creighton I had his returns for 1936, '37, and '38, for investigation, and would like to see what books or records he had to substantiate the income and the deductions on the return. Mr. Creighton said he had no books. I asked what other records he had and asked about his bank accounts. He said he had some bank statements, some of the checks, but the accounts were not very active, so probably didn't show very much.

That is what Creighton said to me. The only thing said about records was that he had no books; that the checks and statements were all he had. He said that his business was keeping a book at 6243 South Cottage Grove Avenue. That is the only place he mentioned. He said he had part of his records there, a part of them at the bank, if that is material, and that some of his records were at home—I went to his safe deposit box at the Continental and got some checks and bank statements. Mr. Creighton turned over to me part of the bank statements at his home. I think there were statements for '36 and '37, and some checks for '36 and '37.

The records I secured at the Continental were the bank statements and checks for '38. There was one letter from a cigarette vending machine turned over to me by Creighton. I talked to Mr. Creighton once after that in our office in the Bankers Building. There was no one else present at this conversation besides myself and Creighton. I asked if he had found any more records that would be of benefit to me. He said no, that he had not 1022 found any additional records. I asked him if he could give me any further light on the items and he said no. That was our conversation at that time. That was all of it.

After talking with Mr. Creighton I went to the banks and got the ledger sheets of his account, and copied that, got some of the deposit tickets, and then I started running the checks film through the Recordack, to see if I could find anything further. That was the Mid-City National

Bank at Madison and La Salle Street. I examined these films for the years 1936, '37 and '38. I examined the films through October, November and December for 1936, and checked back on the other years, but not every day of those years. I checked all of the year 1937, and about the first nine months of '38. Mr. Schultz, the cashier, turned over those records of the Mid City National to me for examination.

Government's Exhibits, X-187, are films for the Recordack machine. They have the mark "X" that I put on there when I checked them. This one here has no "X." I can not state whether I examined that film. I don't know whether I put that "O" on there or not. I think I can tell from an examination of my work papers whether I did examine that film. Yes, I examined that. That box is right.

I examined Government's Exhibit X-188, containing a number of small boxes. These contain the "X" I have referred to before.

I examined Government's Exhibit X-189, being a box containing a number of small boxes, at the Mid City National Bank.

I examined Government's Exhibit X-186, being a box containing a number of small boxes.

I examined Government's Exhibit X-190, being a box containing 17 small boxes.

1023 I examined those in the course of my investigation on this assignment about which I have testified.

In the course of my investigation I had available Government's Exhibit X-192.

Referring to Government's Exhibits, X-186, X-187, X-188, X-189 and X-190, containing those boxes of films I have just looked at, I ran those through the projector, getting a picture of the checks, and picked out of those the check that had A. J. Creighton's endorsement on it, and in the course of running this film through the projector I saw the front and the back of the check. Those were checks cashed at the Mid City National Bank.

I spent about five weeks examining those Recordack films, being Government's Exhibit X-186 to 190, inclusive. I worked about from a quarter to nine to a quarter to five in the evening, an hour out for dinner. This examination was made in the bank building on the second floor. I did, in the course of my examination, make a

record of the total number of checks from these Recordak films. The exhibits I referred to are the amount of checks cashed with the endorsement "A. J. Creighton" appearing on the check for the period I have testified to in 1936.

Q. Will you state what that amount was?

Mr. Thompson: We object to the witness stating the amount. It is hearsay as to all the rest of these defendants and immaterial to any issue in this case. It is impossible for these defendants to cross examine this witness with respect to what he saw looking into this machine, except that we take five weeks to run them through here.

The Court: Objection overruled.

Mr. Thompson: It is not the best evidence. It is contrary to the constitutional right of the defendant to be faced with the witnesses.

The Court: Overruled.

1024 The amount of the checks that were cashed in that bank by Creighton in 1936 is \$47,922.37.

Mr. Thompson: If the Court please, before we get past that I move to strike that on the ground there is no proof that this witness knows the signature of A. J. Creighton, and no proof that A. J. Creighton has cashed a single check he is now testifying about.

The Court: What do you say to the first objection?

Mr. Hurley: He says he had this signature card available, which I have referred him to at all times in the examination of these Recordak films, which heretofore has been shown that was the signature of Creighton, and that was on file in the bank records.

Mr. Thompson: No proof that this witness is qualified to make a comparison of the signatures to determine who signed these checks or endorsed them.

The Court: Go on and find out what he did to them.

Mr. Hurley continues the examination:

The Witness: When I was making this examination at the bank, Government's Exhibit X-192 was not in front of me. I had seen it, though. I saw the signature of the defendant Creighton there. I saw it on the return. I have seen some of the checks that I saw in the Filmograph. When I saw those checks that I state had Creighton's signature on them they were in the hands of the maker, Donald P. Blake.

Mr. Hurley: Those checks are in evidence, if the Court please.

Mr. Thompson: It is still a matter of comparison of the signature. This witness has shown no qualification to be able to tell by comparison, and furthermore, he was five weeks examining these checks. He says he did not have this before him. He just saw it once.

The Court: He saw the returns, some of the re-1025 turns of A. J. Creighton. He has seen checks bearing the endorsements of Creighton, which the maker of the check has paid. I think it might be said that that is the signature of the defendant Creighton, and there may be some doubt further whether he is required to know the signature of Mr. Creighton.

What he is testifying to is the checks bearing this name and handwriting there.

Mr. Thompson: But we are having that proof put in here against the defendant Johnson and a lot of other people.

The Court: I think he is qualified. I think he is generally qualified to identify the signature of the defendant Creighton. Objection overruled.

Mr. Thompson: We object to all that as immaterial and tending in no way to prove the income of the defendant Johnson.

The Court: Overruled.

Mr. Thompson: And hearsay as to all the defendants except Creighton.

The Court: Overruled.

The Witness: The defendant Creighton turned over to me, at the time I saw him at his home, certain of his checks that were drawn on the Mid City and the Continental.

Examination by the Court.

There were forty or fifty checks. On the Mid City they were signed A. J. Creighton, the same as on the card.

The Court: Objection overruled.

Mr. Hurley continues examination:

I made a computation of the amount of checks in dollars and cents, cashed at the Mid City National Bank by the defendant Creighton during the year 1937. The total was \$203,954.03. That was arrived at through an examination of Government's Exhibit X-186 to X-190 and X-192.1026 inclusive. I examined the first nine months of 1938 and made a computation of the amount of checks in

dollars and cents cashed at the Mid City National Bank by the defendant Creighton during that period of time. The amount was \$88,812.92.

Q. Can you tell us what the total was for the period of '36, all of the year '37, and the nine month period of '38?

A. I am not certain of that.

Mr. Thompson: If the Court please, this is merely a matter of computation. You can't lump evidence for the various years on a tax case. A man's income tax is due from year to year, and every year is a stop. Every year is a point of commencement.

We object to it as hearsay as to all the rest of these defendants and renew all the other objections that we have made as to this kind of evidence.

The Court: Overruled.

Mr. Hurley: Can you tell us what that total was, Mr. Lawrason?

A. I can add it up and give it to you, yes.

(The following proceedings were had out of the hearing of the Jury.)

Mr. Thompson: If the Court please, we would like the Government to state to what point they propose to offer this. I don't see how you can lump taxes. The transactions which took place in 1937 certainly can't have any bearing on 1936. Each year is a certain separate tax period.

Mr. Hurley: The total is all of the items that Creighton cashed at the bank.

Mr. Thompson: Yes, for what purpose is the total given, only to inflame by having some box car figures here? We will certainly break it down.

1027 Mr. Hurley: You have a right. It is your privilege.

The Court: Overruled.

Mr. Callaghan: I wish to call your Honor's attention to page 26 of the bill of particulars. That is at variance with this witness' figures, by almost a hundred thousand dollars. Start with the year 1937, \$100,000.00. The figure here was almost double that. That is the information furnished us, to which we came here to defend in this law suit.

The Court: What do you say about that?

Mr. Hurley: I think the total all together comes to about the same amount.

Mr. Callaghan: For the year '37 we are talking now.

Mr. Hurley: I don't think that is vital. That is for giving the source where it comes from.

Mr. Callaghan: That is not what the answer to the question was. What do these pictures show as to the aiders and abettors? That is what you say Creighton did as an aider and abettor, to cash checks for a certain amount.

Mr. Campbell: The amount is not so material as the fact that he cashed checks.

Mr. Callaghan: It is material.

The Court: What is the page?

Mr. Callaghan: Page 26.

The Court: What do you say about that '37 item?

Mr. Campbell: Your Honor, on page 4 of the bill of particulars is reference to the '37 item of gross income of the Defendant, and on 26 it refers to the next page, he aided and abetted, and it lists the amount of gross income, item 5 on page 40 is two hundred and nine thousand, on this Mid-City. There is no computation. There is a large figure cited.

Mr. Callaghan: Several banks lumped together and several persons to those transactions. I am talking about the bill of particulars furnished the defendant Creighton.

Mr. Campbell: As I recall that motion to further particularize there was denied, that is, to breaking it down.

Mr. Callaghan: That has nothing to do with the inquiry.

The Court: What was this figure the witness gave for '37?

Mr. Campbell: I don't recall what the figure was.

Mr. Hurley: For '37 was \$203,954.00.

The Court: Overruled.

The following occurred in the presence of the jury:

Mr. Hurley: Read the last question and answer.

(Same read as follows:)

"Q. Can you tell us what the total was for the period of '36, all of the year '37, and the nine-month period of '38?

"A. I am not certain of that.

Also: "I can add it up and give it to you, yes."

The Witness: \$340,689.32.

I have seen Government's Exhibits X-238 to 251, inclusive, before. I saw them in the batch of checks that Mr.

Creighton gave me that I have described heretofore in my testimony. These are checks drawn by Mr. Creighton on the Mid-City National Bank. The signature is A. J. Creighton on each one of those.

My accounting experience, outside of the Government Service, was that I have kept books and done a little auditing and taught a little, at the Smith Deal Business College, Richmond, Virginia. I taught accounting there about March, 1919, to about November of 1919.

Mr. Thompson: We admit the qualifications of the witness for all the accounting he has testified to so far.

Mr. Hurley: I offer in evidence at this time, if the Court please, Government's Exhibits X-238 to 251, inclusive.

1029 Mr. Thompson: We object to these documents as immaterial to any issue in this case; certainly tend in no way to prove the taxable income of the defendant Johnson or others, and I can't see any purpose in offering them.

The Court: Are these some of the papers that Mr. Creighton gave to you when you went to talk with
1030 him about his income tax?

A. Yes, sir.

Mr. Thompson: May I suggest that this isn't a prosecution against Mr. Creighton for his income tax; has no bearing on that subject.

The Court: They may be received.

(Said exhibits, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS X-238 to X-251, inclusive.)

Cross-Examination by Mr. Thompson.

The earliest film that I checked was for the first of July, 1936. I think that film is in some of these boxes—I didn't look for July 1st. They are all dated on the box. The way I identified these boxes is by the date, the cross mark and the ones I checked against my records here. This memorandum I hold in my hand is something I made from my examination of films out at this bank. I made a memorandum immediately upon sighting a check through this projector. I put down the date of the film, if the check was large I put down the name of the maker, and on all of them I put down the amount of the check. The first

film dated there is the one of July 1, 1936. I found four on that film before the name of A. J. Creighton.

I had the wrong page, Mr. Attorney. I would like to start over where you started asking me about the earliest check. The earliest check or the earliest film was October 26, 1936. July 1, 1936 is another sheet. That hasn't anything to do with these checks here, that I have been testifying about. Commencing with October 26, 1936, I found five checks on that film. I think that film is there. I can tell

whether it is here by the date on the little box. I 1031 wouldn't know what was in the little box until I run it through. I might tell by looking at it with the naked eye, but it would be a pretty hard job. I think that is the little box. It has two dates there, but that must be the one. I told you before I can't tell you what is in that until I run it through, but I think those checks are right in there. I identified that box as the box I had before because those were the cashed checks of October 26th and 27th and I put a mark on there to show that I had finished the checks. The mark put on there is just a straight cross mark—a straight line horizontally and a straight line vertically. I could not tell my mark from any one else's if it looked the same. My mark on these boxes is practically all the same. Some of them are horizontal and vertical on the box. That one is a straight vertical mark and a straight horizontal mark. This one for December 7, 1936, is just a plain old every day X. One is a cross and the other one is an X. When I look over these I notice that I have every variety of cross and X on these boxes. There is nothing I can identify them by by that cross on there except I know that I did place a cross on each box I handled.

That pink slip in the October one has nothing to do with this case.

I don't know what is on this film. I can not tell you whether that is the film for 1936 without the projector. I am not positive, but I think there is a date on the film. That date is right on the edge of one of the margins. I can read "Kodak Safety Film", on the margin. I can't read anything else, but I know there are markings all on there to designate the different groups of the checks, and I still think the date is on there. I can't see those marks,

but I know they are there. I think it took me five 1032 weeks to go through those films. I made a memorandum of what I saw as I went along. Assuming that

this is the film that I examined, the first check I found on there was in the amount of \$200. The maker is Henry Shoenstat. Ninety-five percent of the checks were made payable to cash. I didn't note the payee on my memorandum. I made a calculation when I was about halfway through and it ran about ninety-five percent up to that time. I don't think it changed. Then I quit making the calculation.

I can't say for sure, but I think Mr. Creighton is the first and only endorser on the first check, because I think the check was made to cash. That does not mean that it was not cashed by the corner grocer and then brought up to Mr. Creighton to cash for him. I did not see them presented. I don't know what day of the week that check was put through the bank. I don't know whether it was the 26th or the 27th, but I think my date is the date it was marked by the paying teller.

This film that we have been looking at bears both dates, October 26 and October 27. My notes do not say which day. I don't know what day of the week October 26 was. October 24 was the date of the check and it was put through the bank on October 26 or October 27. I know who the maker is. I talked to him. I didn't talk to the maker of all these checks. I would say I spent one week talking to makers of these checks.

There are four more checks on this film that we are talking about. I have the name of the payee for one of the checks. I can't say positively that the payee endorsed that check. I don't know how many endorsements were on that check that we are now discussing that were ahead of the endorsement of A. J. Creighton. One of the other four checks was payable to currency. I don't know who the other three were payable to.

I don't know how many endorsements were on the back of any one of these five checks. I think Mr. Creighton 1033 was number one, endorser on the back of these five checks. On the one to currency he was the only endorser—I remember that.

I haven't the date when I looked at this film, October 26, 1936. I don't know the day I made the examination. I was out there, not continuously. I was out there probably two weeks and I was away from there a while and then I went back again and in between time there were days that I wasn't there. My best judgment as to when

I was out there examining this film was January 26, 1940. It was not more than one day later and what I recollect about these checks is just a matter of memory excepting as I have it on my work sheets there. When I would see the check as I ran this through the projector I then and there made the notation or memorandum. I stopped the machine to look at the check as I made the notes. I saw the front and the back of each of these checks. The checks were run through in groups. I can give you a little illustration of how I knew I was looking at the front and back of something that was the same thing.

Let us suppose there were twenty checks in the group. I would run down the check say five, the sixth check would be A. J. Creighton. Then I would count how many there were there. Four. Then I would turn over to the front and count back five and the sixth and the next three would be A. J. Creighton. Sometimes, or, like the one I mentioned there, with a payee, you would tie it up closer by finding a payee who had endorsed the check.

I had a great many more than twenty checks. They took a picture of the front of all these checks first and then started in and took a picture of the back of all of them.

Q. How do you know they were kept in the same order when they took the front and then took the backs?

A. When I would find the endorsed check in the same spot on the front and the back, that was in order.

1034 Schoenstadt is the maker on this first check. It was not a company check that he signed as an officer of the company. I don't know who the payee was of that check. I don't know how many endorsements were on that check ahead of the endorsement of Creighton. I don't know whether that check was cashed as an accommodation for some merchant on the street or what happened to it. The aggregate that I testified to for the year 1936 was from October 26. That does not include any of the first sheet that I made the mistake on. I didn't look further back than October, 1936, so far as Mr. Creighton's business was concerned. I didn't go clear back and find out that he had been a customer of this bank for twenty years. His account that I saw did not go back that far. I didn't find out that he had opened and closed accounts there over the period of the last fifteen years. I have no record of my figures as to the amount of checks that were made out to currency in 1936 and endorsed by Mr. Creighton.

When I say ninety-five percent of the checks were made out to cash or currency I mean ninety-five percent in number of checks, not in amount of checks. Generally speaking, the smaller checks were not the ones made out to cash or currency. A great many large checks were made out to currency. I would say \$3,000 was the biggest check I found on all this bunch of film. I don't think I found one for five thousand. I don't recall finding any there of a customer from Kansas City that sent in a check for \$5,000. I didn't check to see how much money Mr. Creighton paid out. These checks that were identified by me as having been delivered to me by Mr. Creighton were a lot of checks payable to the Director of Labor and Collector of Internal Revenue on account of Social Security and Unemployment taxes. Mr. Creighton did not send me down to a brokerage house to check some brokerage accounts respecting some transactions. He gave me his bank statements; he didn't send me to any banks. He didn't give me authority to go to banks and get this information. The banks had a subpoena to produce the records to me. I have got a copy of that subpoena. I can produce it. I have it here. I don't know that any court order preceded that subpoena. When I presented that said piece of paper to the bank the bank turned over these records. It was necessary for me to refer to the memorandum I have been having in my lap as to what I have testified to here as to dates, amounts and names.

(Memorandum examined by Mr. Thompson.)

On October 26, 1936, I had seventeen checks instead of five. I had down there four of the larger checks and the fifth item is thirteen small checks. I didn't put down the names of the makers on those small checks. I don't know how many endorsements were on these thirteen small checks. I don't know whether Mr. Creighton was the first, second or third endorser.

This sheet here is what I would make as I looked at the film. Here are the four checks and here the thirteen. As to the thirteen little ones I just noted the amount and the endorser. There are three in there that are large.

Q. I notice you have on that memorandum October 26, 1936. Then over in a circle you have a question mark, and after that October 29, 1936. Then below you have October 29, 1936, and then a circle, and after that a question mark and October 26, 1936. Didn't you know which is which?

A. Yes. Do you refer to these?

Q. On your front sheet there. Does that indicate to you that you got those two boxes mixed up and you didn't know which was which?

A. No. No; that does not indicate that.

1036

Redirect Examination by Mr. Hurley.

A. J. Creighton was the last endorser on these checks that I have examined.

In my capacity as an agent of the Internal Revenue Department I have a commission that I carry with me (handing document to counsel). It is the usual and ordinary course of business that such authority be issued to me as an agent of the Internal Revenue Department.

Mr. Thompson: If the Court please, this is improper redirect, and furthermore, we do not question that Mr. Lawrason is an internal revenue agent.

Mr. Hurley: I am only going into it, if your Honor please, because of this question of the bank turning over the records to this man as an agent.

The Court: Overruled.

The Witness: I had no way of checking what Mr. Creighton paid out.

Examination by the Court.

I didn't put down anything that I couldn't read on those films. I had a projector. The bank furnished me with a projector and there is a place down in front of you there so that what I saw was as large as an ordinary check. This machine is the same type of machine as the Recordak. It is not the same one I looked through. The other one is a better machine.

(Reference was being made to instrument brought in on the evening of September 17, being the day that Mr. Shultz produced the films.)

1037 ARTHUR W. SCHAFFER, recalled as a witness by the Government, having been previously duly sworn, was examined and testified as follows:

Direct Examination by Mr. E. Riley Campbell.

I testified the other day in this matter. At that time I was sworn. I live at 4629 North Harding Avenue. My business is sales and service for Autovent Fan and Blower Company.

I have known an individual by the name of Roy Love about five or six years. I first met him at the Horse Shoe Restaurant. My first business transaction with him with regards to service was about five or six years ago. The last one was about May, last year.

Government's Exhibit 208-A and Government's Exhibit 208-B are blower equipment for an exhaust system. Looking at those exhibits, in the lower right-hand corner, I did see that signature signed by Roy Love, Lightning Construction Company.

The equipment specified on Government's Exhibit 208-A and B were delivered to the Bon Air Country Club. I saw it after it was delivered.

The signature on Government's Exhibits 208-A and B were signed about two days after April 28, 1939. Nobody else was present when Mr. Love affixed his signature thereon. All of that writing in the lower right-hand corner was placed there in my presence. That includes "Lightning Construction Company", "Roy H. Love".

That was written in my presence by the same party, Roy Love.

Mr. Campbell: I offer in evidence GOVERNMENT'S EXHIBITS X-208-A, B, C, D and E.

Mr. Thompson: We object to the documents as immaterial to any issue in this case, tending in no way to prove the taxable income of the defendant Johnson; no foundation laid showing that the items were paid for, or certainly that they were paid for by Johnson; or that they are not already duplicated by items now in evidence; the documents are hearsay as to all these defendants.

The Court: They may be received. The objections will be overruled.

(Said exhibits, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS X-208-A, B, C, D and E.)

Mr. Campbell: Then at this time, your Honor, I renew the offer of GOVERNMENT'S EXHIBITS X-208, X-209-A to X-209-D-1, and X-210-A, the same being records previously identified of the Deerfield Bank by the witnesses Lutz and McGinnis the other day; Exhibit 208 having upon it the signature of Roy H. Love.

Mr. Thompson: What is the change in the record over what it was when the Court rejected them the other day?

Mr. Campbell: The witness here has identified the signature of one Roy H. Love. That is, he seen him write the signature. That establishes a standard of comparison for the exhibits which your Honor holds in his hand, the signature card.

Mr. Thompson: If your Honor please, I thought the rule was well established that you can't put in documents for the sole purpose of setting a standard of comparison. If there are documents in evidence for other purposes they may be compared. There has been nobody put on the witness stand yet that says that the signature on that card that is the basis for the admission of the documents 1039 your Honor now has before him is anything like or the same as the signature on these documents that have been presented. So we renew our objection we made the other day. No proper foundation has been laid for the receipt of these records.

Mr. Campbell: We are entitled to offer a standard for comparison. The whole matter is covered by the Code and by the decided cases. It is now a question of fact for somebody else to say whether the signature on the signature card is the same as the one on 208 just identified by this witness. Aside from that I would be entitled to ask the witness for his opinion. The standard of comparison has been fully laid.

The Court: Well, I will hear you at the recess.

Mr. Thompson: Move to strike the testimony of the witness as immaterial to any issue in this case, in no way connected up with the matter in this case.

The Court: Denied.

CHARLES O'NEIL, being duly sworn, testified as follows:

Direct Examination by Mr. Plunkett.

I live at 2643 Clybourne Avenue. We manufacture gaming supplies. I operate as E. M. O'Neil & Company. It has been a corporation since the first of January, 1939. I have, since the incorporation of the company, manufactured supplies for bookmaking establishments. We didn't exactly manufacture them. We had the work done outside. It was mostly printing and pencils, and different kinds of stickers. We do manufacture dice, gaming tables, roulette wheels. I have been in that business in Chicago fifteen years.

Government's Exhibit O-212-A to F, inclusive, O-213-A to P, inclusive, O-214-A to S, inclusive, O-215-A to O, inclusive, O-217-A to M, inclusive, O-218-A to S, inclusive, are records of my company. If these records are in order they cover the period of time from the 2nd day of February to the 7th of September, 1939.

I did have a business contact with an address at 3971 Milwaukee Avenue. These records reflect my business contacts with that address there if they are all at the same address. I have been to the address, 3971 Milwaukee Avenue myself, probably as often as there are bills here. It was an office building. The door I went through must have had the number on it, and I found it the first time. From then on I knew it. I don't know how many floors this building had. I used to deliver the stuff right at the door. I used to knock at it and somebody would come and open the door. There were stairs inside of that doorway. The name of the customer that ordered all of that equipment from me was John Morgan. That was the only name I knew him under. I met him quite a few times, about twice.

I notice on Government's Exhibits, O-214-B, C, D, et cetera, "List one, list two" and on the other invoices there is "list three, four, five, six, seven, eight, nine" and so on. Here (indicating) for instance, is "List number three". That is nineteen boys. Then underneath is "sixteen boys". The nineteen consisted of 100 each and the 16 boys was a list of 50 each. Boys are small packages of gummed stickers with the names of jockeys on them. I believe they paste them on the horses running in a race to indicate the jockeys.

I have stated that these are records of my company, kept in the usual and regular course of business. It is usual and regular in the course of my business to keep such records like this.

I have listed on Government's Exhibit O-214-S, an invoice under date of April 27, 1938, "Boston pencil sharpener, Number 1". "List Number 1" means order number 1. Our order number is up here (indicating)—and it goes with the invoice, and that is the way it would show "Order number 1". I am speaking of the customer. I don't know how many different order numbers our customer had—whatever is on these records.

Q. Wherever that list number appears, is that a separate order number?

A. That is how I considered it. It was done up that way. That is the way I received the order.

Q. Now, handing you Government's Exhibit O-216-B, an invoice under date of June 2, 1939. You will notice a long list of numbers there, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15. What is the meaning of those numbers on this invoice?

Mr. Thompson: If the Court please, before we go any further with this, I object to all of this as hearsay as to these defendants, until there is some connection shown; immaterial to any issue in this case. They have not even got an address of any defendant shown so far.

The Court: What is the purpose?

Mr. Plunkett: This is the address to which this stuff was delivered, and this address is that clearing house address on Milwaukee avenue where this witness says he delivered that equipment.

Mr. Thompson: We object to that statement.

Mr. Hess: There is no evidence of any clearing house; no proof of any clearing house at all.

Mr. Thompson: We have to have a little proof in this case besides counsel's promises. There is no proof of any clearing house in the city of Chicago.

1042 The Court: Overruled.

The Witness: Well, that is order numbers. That is the way the man ordered them.

With reference to these numbers in the delivery of the goods reflected on that invoice they were wrapped in separate packages.

Q. Was anything put on the top of the separate packages?

Mr. Thompson: We object to hearsay. Obviously this information must come from conversations with some unidentified person. They couldn't be delivered otherwise.

The Court: Overruled.

The Witness: List number 8 is for 33 boys. They were wrapped in a package and the number "8" was written on it. It was delivered to 3971 Milwaukee Avenue. I believe that is true of all of the entries on this particular invoice I am looking at. The number that appears over in the far lefthand column was put on the top of each package. They were all delivered to the same place. The same thing is true of all these invoices that contain a number in this column. That is also true of the invoices that contain the word "list" and a number following it. That is true of the invoices containing the word "Order" and a number following it.

The picture, Government's Exhibit O-6, is familiar to me. That is the place where I delivered this equipment. This is the place where they had a crap game.

Q. Where in that building did you deliver, if you did deliver this equipment?

Mr. Thompson: We object to that as leading and suggestive.

The Court: Overruled.

The Witness: That is north. Down here some-1043 where (indicating).

Mr. Plunkett: Q. Was there another door down there?

The Witness: Yes.

The Court: "Down here somewhere", indicating what?

The Witness: It was in that building. I am pretty sure, or one that was in the building next to it. There was a single door there.

Mr. Plunkett: Indicating the door farther in the building than shown in this picture?

The Witness: I am pretty sure.

The Court: Which side?

The Witness: The side to the south.

Mr. Plunkett: To the right of the picture as you face it?

The Witness: To the right of the picture.

The Witness: I couldn't state whether I have ever seen before the person on Government's Exhibit O-125.

I have seen the Morgan whose accounts I have identified

about twice, as near as I can recall. This picture is a somewhat bony structure, but whether that is the party I saw I couldn't identify him from that picture.

Government's Exhibit O-217-H, an invoice under date of July 20, 1939, is for 25 gross of golf pencils. The records show they were stamped "Bon Air". These pencils were delivered to that address. We would deliver to wherever the address is on there. I have to look on the bill. That was July 20th. These were delivered to 3971 Milwaukee Avenue. If anything is marked "Morgan" in here, or the address is 3971 Milwaukee Avenue they were all delivered to that address.

Mr. Plunkett: The Government will offer GOV-1044 ERNMENT'S EXHIBIT O-212 to O-218, with the inclusive alphabetical letters.

Cross-Examination by Mr. Thompson.

My place of business is 2643 Clybourn Avenue. I have been in business at that address since the first of February or the first of March, about '31. I have been in business in Chicago since the first of January, 1925. When I delivered these goods on these billings they usually used to shout downstairs. Somebody would come down and open the door. They would leave the door open and I would put the package inside and leave it there.

I am the proprietor of this company. I am also the salesman and delivery boy, and everything. I take the orders and fill them. I don't see the Mr. Morgan that I sold to. He is not one of the defendants here.

I know John M. Flanagan about fourteen years. I sold him goods for fourteen years, I guess. I sold him dice, lay-out, crap sticks, all of those things, roulette balls—different things used in gambling houses, and books for bookies.

I know Mr. Sommers. I think I have only known him about twelve years—maybe nine. I used to sell Mr. Sommers at his place that is called the Dev-Lin, and at a place called the Horse Shoe. I called there on Mr. Sommers personally. I delivered the goods to him personally. He paid for them. The dice that he ordered were identified in a particular way. I usually stamped them with a horse shoe, I think, or the name Dev-Lin. His dice, on the deuce side, between the two spots, had the word "Horse Shoe" or a

picture of a Horse Shoe, or the word, "Dev-Lin". I didn't sell dice so marked to anybody else except Jack Sommers.

I usually marked the dice sold to Johnny Flanagan "4020". That was on the deuce side, between the two spots.

1045 I have known Andy Creighton for thirteen or fourteen years, possibly fifteen. I called on him the last seven or eight years, as I recall, at Cottage Grove Avenue, at 119th Street and Vincennes Avenue, and at Western Avenue, 9730, I think it was. I sold Mr. Creighton dice, layout tables, different supplies for gambling houses. I delivered them to him after he bought them and he paid me for them. When he was at Cottage Grove Avenue I used to mark his dice "Southland". When he was at Western Avenue I marked them "9730", whatever the number of the Western Club was.

I never heard of the Club Select.

I don't know the 411 Club.

I don't remember ever selling the Proviso Club.

I sold Mr. Sommers supplies, roulette supplies and different things for gambling houses. I sold them pencils a wheel checks, poker chips, marker racks and markers and roulette wheels. When his roulette wheels got out of order I repaired them, and sold him black jack layouts—every thing that went with a gambling house.

I know Mr. James Hartigan, I guess about fourteen or fifteen years. I sold him something. I called on him at the Harlem Stables and Lincoln Tavern. When he was at the Lincoln Tavern I marked the dice "Lincoln". When he was at the Stables I marked them "Harlem". I delivered the goods to him when I got his order. He paid me for them. I sold him the same as the other places that you have asked me about, roulette wheels, and layouts, dice tables and dice, sticks and cages.

I know Reginald Mackay. I have sold him goods, at Cicero and Milwaukee, in the club known as the Casino. That is the same building they showed me a picture of. That is 4715 Irving Park Boulevard. This building is touched with three streets, Irving Park on one side and Cicero on another side. It sets in the point of these
1046 three streets.

This fellow Morgan was not Mr. Mackay. 3971 is the address that Morgan gave me. This address on these bills where I delivered this stuff to Morgan is not the same

address as Mr. Mackay's Casino. The entrance to the casino used to be on Irving Park Boulevard, and then later on it was changed, and I guess they remodeled it, or something, and the entrance was on Milwaukee Avenue.

The Casino room went clear through the building.

Mr. Mackay bought from me paraphernalia of all kinds for gambling houses. I don't know who ran the Casino prior to Mr. Mackay. Mr. Mackay owned it as far as I know.

I knew a man named Garrett Meade. He used to be in the Casino prior to Mr. Mackay's running it. I sold him goods while he ran it. I sold supplies to all the gambling houses all over Chicago. I think there are more than eight people running gambling houses in Chicago. I sell gambling supplies to gambling houses all over the United States.

I have told you all about the persons to whom these supplies were delivered, as indicated by these exhibits here.

Mr. Thompson: We object to the document as having no connection with any of these defendants and being altogether immaterial to any issue in this case. And all the conversations relating to them as hearsay and to the documents as hearsay.

(The following proceedings were had out of the hearing of the Jury.)

Mr. Plunkett: They are offered for the purpose of corroborating the previous witnesses who testified the supplies were bought for them in these places named in the bill of particulars at that place; and offered further for the purpose of showing that this place could not possibly have been just an ordinary lay-out spot. There was 1047 enough supplies bought there to operate a dozen hand-books or maybe twenty-five.

(The following proceedings were had in the hearing of the Jury.)

Mr. Thompson: Continues the cross-examination.

I know the defendant William J. Kelly. He ran a gambling house and I sold him goods, all kinds of gambling supplies. I marked his dice D and D. He wasn't this man Morgan I sent these supplies to.

The Court: They may be received. Objections will be overruled.

(Which said documents so offered and received in evidence are marked GOVERNMENT'S EXHIBITS O-212-A to F; O-213-A to P; O-214-A to S; O-215-A to U; O-216-A to O; O-217-A to M; O-218-A to S.)

Mr. Hurley: At this time, if the Court please, I would like to offer in evidence Government's Exhibits X-180-1 to X-180-389, which are the deposit tickets of the Lawrence Avenue Currency Exchange at the Central National Bank, which have been heretofore identified by the witness Gus Nelson from that bank as being part of the records of the bank.

Mr. Thompson: I object to them as immaterial, they do not tend in any way to prove a taxable income of the defendant Johnson for the years involved in this indictment; have no bearing or probative value on any triable issue in this case, and they are hearsay as to each and every defendant in this case excepting the defendant Brown.

The Court: Objection overruled. They may be received.

(Said exhibits, so offered and received in evidence, were thereupon marked GOVERNMENT'S EXHIBITS X-180-1 to X-180-389.)

1048 FRANK J. CLIFFORD, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hurley.

My name is Frank J. Clifford. I live at Park Ridge, Illinois. I am an Internal Revenue Agent almost fifteen years. I have been assigned to the Chicago office the entire time. My work as an Internal Revenue Agent, consists of the examination and verification of income tax returns filed, from books and records.

I completed the accounting course offered by the Walton School of Commerce—that was for four years. In 1049 addition to that I am a Revenue Agent for five years in industrial accounting. In the course of my work I had occasion to examine books and records.

In the course of my duties as an Internal Revenue Agent I was assigned to Government's Exhibits R-10, R-11, R-12 and R-13, being the individual income tax returns for William R. Johnson, for examination and audit. In the course of my duties I also had available Government's Exhibits R-6, R-7, R-8 and R-9, in evidence, being the returns for the years '32 through '35. I was assigned by Mr. L. H. Wilson, my superior revenue agent. He is a revenue agent also.

In connection with this assignment the first return I got was for the year 1937, and I called the office of Mr. Joseph Johnson and told him I had the return of Mr. William Johnson for that year and would like to get in touch with him. That would be the latter part of January, '39. A couple of days later Mr. Joseph Radomski, called me and made an appointment to go out to an office on South Green Street, where he had the records. I went out there—I think it was January 27, 1939, and examined what records he had, which were the farm and the real estate. The farm was cash receipts and expenditures, a summary sheet—ledger sheet—and a lot of invoices, paid invoices; for the real estate, was monthly statements submitted by Mr. Tavelin, cancelled checks of the two buildings, at Thorndale and Glenwood and Division and Dearborn. Those were accounts with the Northern Trust.

The reports on the real estate are copies of Government's Exhibits E-7, E-9, E-12, E-14, E-15, E-16, E-17, E-18, E-19, E-20, E-22, E-23, E-24, E-25 and E-26. The copies I saw of the exhibits you just read were for the year '37 only. I examined these books and records and compared them with the figures that were shown on Mr. Johnson's return.

1050 The farm records were for Sunny Acres Farm. I saw summary sheet which was, in effect, the ledger and pay invoices. I made an extract of the summary sheet of operating expenses, as well as the capital items purchased during that year, 1937. The operating expense items are in accordance with the return. I checked those Capital items is about one hundred and two thousand. The personal expense was about thirty-two thousand.

Q. When you say \$102,000,—that was the expenditure, was it?

A. Yes, sir. That was outside of the capital expenditures made during that year for improvements, cattle, machinery, equipment, and so forth.

There were no other records than those I have described submitted to me in Radomski's office. I asked if he had anything on the gambling income. He said no, the figure on that return was given to him by Mr. Johnson. He did not have any detail on that. I did later talk to William R. Johnson. When I got back to the office I called Mr. Joseph Johnson's office again and told him I would like to talk to Mr. William Johnson personally. We made an appointment to meet him in Mr. Joseph Johnson's office in the afternoon, February 3, '39. I met Mr. Johnson on

that day. Mr. Joseph Johnson and myself were present. I told William R. Johnson that Joe Radomski did not have any records on the gambling. I asked him what he had, and he said that all he had was a notation in a memorandum book showing the monthly total. I asked him if that was the only record he ever kept. He said no, he kept a daily summary, but at the end of the month he destroyed that. He did not have that little book with him. He told me that it was out on the farm. He would pick the figures out of it and send them to me.

I also asked him about the purchase price of the farm.

He told me one hundred and forty-five thousand.

1051 He said it had the residence and usual farm buildings, a few horses, which he admits giving away, and a few cows and hogs.

He further stated that he had made several improvements, bought new machinery, and so forth.

I don't recall anything further said at that time.

Several days later I went over to Mr. Joseph Johnson's office and picked up a piece of paper on which was shown the figures covering gambling for 1937. I received it from Mr. Joseph Johnson. I have that document.

The next time I saw the defendant, William R. Johnson, was in Mr. L. H. Wilson's office, March 27, '39, at which time a question and answer statement was taken from Mr. Johnson. Mr. Wilson, Mr. Riley Campbell, Mr. Johnson and myself, and Miss Wakefield, the stenographer, were present. Government's Exhibit O-207 is the question and answer form which I have referred to.

The next time I saw the defendant, Mr. William R. Johnson was November 3, '39, in the office of Mr. W. A. Summers, Special Agent. Those present at that time were Mr. Summers, Mr. Converse, Mr. Johnson, Mr. Wait and myself. That was Mr. Ed Wait, indicating the defendant Wait. I saw the defendant Johnson at that time. I called his attention at that time to the fact that there was no record on the books for the catering company of the Bon-Air land. He said "That is mine."

I asked him were the credits on the books of account his. He said those were advanced by me. That applies also to the account of Bud Geary. I asked him if he owned 9730 South Western Avenue. He said, "Yes". When I asked him as to the cost of Bon-Air and 9730, he referred me to Mr. William Goldstein. I asked him if he knew what the costs were. He said, "You get in touch with Mr. Goldstein. He will give you the details and the cost".

I made a notation of the conference. I can't recall what else now without referring to it.

1052 Mr. Thompson: I want the record to show that the witness is referring to a memorandum which we shall desire to see on cross-examination.

The Witness: That is all. There was a remark by Mr. Wait. I asked Mr. Wait if the credit shown on the books at the Bon Air was his, and he said it was. I had occasion to go to an address known as 3428 Lawrence Avenue the afternoon of October 31, '39. When I went out there it was for the purpose of getting in touch with Mr. Brown of the Lawrence Avenue Currency Exchange. When I got there I found it was closed. The young lady gave me Mr. Brown's home address, 4200 Hazel Street. So I went over there. There was no answer to my pushing on the button, so I left a note in Mr. Brown's mail box to call me up the next day. The next morning I got a call saying it was Mr. Brown. I told him I would like to look at the—

Mr. Thompson: We object to this as hearsay conversation and not binding on any of these defendants, except the defendant Brown, if he is identified.

The Court: Sustained as to the other defendants. Overruled as to the defendant Brown.

The Witness: The name of this Brown that I talked to was S. S. Brown. I had the name on the card.

1053 Q. Now, calling your attention to the computation you said that you made with reference to documents in the form of cash books and the summary sheets in Radomski's office, can you give us the exact figure of your computation on that date, Mr. Clifford?

A. For the capital items it is \$102,223; for the personal items it is \$3,238.14.

Q. Was there an item as to the personal items that you have referred to for each of these years, '32 to 1939?

A. These are for the years '37 and '38. There are no personal on any of the other years.

I was there at a time later than the date which I have testified I was out at Mr. Radomski's office, and that was in the forepart of May, 1939.

I talked with William R. Johnson before I went to Radomski's office. I met him in Mr. Wilson's office on March 27th. I told him I would like to continue with the year 1938 but as I didn't have the original return would it be all right to work from his copy and he said yes. Within a short time thereafter Mr. Radomski called me and we

made an appointment, but I wasn't able to get out there until the first part of May, 1939.

Q. Did you at that time make a computation as to the amount shown on the documents which you examined at that time?

A. Those which were not on the return. That is, the capital items and the personal items.

I got that information from the records that Mr. 1054 Radomski had, the summary sheets. Those were the books and records of the defendant Johnson. As a result of my examination of these documents and books I arrived at the figure, for the capital items, \$16,809.26; the items charged to the personal account were \$3,002.49. That was for the year 1938.

I first talked over the 'phone with a man named Brown on the morning of November 1, 1939. I got a call from this party who said he was Mr. Brown.

Q. What did he say and what did you say to him?

Mr. Thompson: We object. That is already in once.

Mr. Hurley: Not the entire conversation, as I recall it.

Mr. Thompson: Yes, but the Court has already confined it to Brown. He hasn't even identified the defendant Brown.

The Court: I will let him testify and it will be admissible only against Brown.

The Witness: I talked to this man who said his name was Brown over the telephone. When he told me he was Mr. Brown I asked him if he was the Mr. Brown who operated the Lawrence Avenue Currency Exchange, and he said he was, and I then told him that I would like to examine the records of the Lawrence Avenue Currency Exchange and he said, "Well, you can't very well do that because I have already destroyed them." I asked him to come down town anyway so that I could talk to him about the records generally and he made an appointment to come down at 1:30 in the afternoon of that day. At 1:30 I got a call from the man who said he was Mr. Brown, and to me it seemed to me like the same voice, who said he couldn't make it, he would be down the next morning at 9:30, and the next morning at about that time I got a call from a woman who said she was Mrs. Brown, said that he had gone out of town.

Mr. Hess: That is objected to, if your Honor 1055 please, not binding on any of them.

The Court: It may stand as against Brown.

The Witness: I did not, at any time subsequent to that, have an appointment with the defendant Brown.

I have made a computation and an analysis based on the exhibits X-178, X-179, X-181 and X-180-I to X-180-389, and the other evidence in the record, to determine the amount of currency delivered by the Central National Bank to the Lawrence Avenue Currency Exchange between the months of July, 1938 and September, 1939, inclusive.

Mr. Thompson: We object to that.

The Court: Overruled.

The Witness: I said that the amount shown by my computation is approximately one million.

Mr. Hurley: Q. And what is the amount?

Mr. Thompson: Now, we object. This is the question we want to object to. There is no proper foundation laid for any computation. It is immaterial as to any issue in this case. Tends in no way to show the taxable income of the defendant Johnson. Furthermore, you can't lump figures for fractions of three years, under any count of this indictment. It is hearsay as to every defendant in this case, and particularly as to the defendant Johnson.

The Court: Overruled.

Mr. Thompson: Furthermore, the witness has not yet identified the documents from which he is testifying.

The Court: Overruled.

The Witness: The amount was approximately \$1,289,000. I have not got the exact amount. That is just a computation I made.

I have made an analysis and computation, based on Government's Exhibits admitted in evidence, Government's Exhibits R-6, R-7, R-8, R-9, R-10, R-11, R-12, R-13, 1056 being the income tax returns of the defendant Johnson for the years 1932 to 1939, inclusive; and Exhibits R-86, R-87, R-88, to and including R-106, inclusive, which are certified copies of the assessment list from April, 1929, to April, 1940, inclusive; and Exhibits E-7, E-9, E-12, E-14, E-15, E-16, E-17, E-18, E-19, E-20, E-22, E-23, E-24, E-25, E-26, E-27, E-27-A, E-28, E-28-A, E-29, E-29-A, E-30, E-30-A, E-31, E-31-A, E-31-B, E-32, E-32-A, E-33, E-33-A, E-33-B, E-34, E-34-A, E-35, E-35-A, E-36, E-36-A, E-37, E-37-A, B, C, D, E-38, E-38-A, E-39, E-39-A and B, being escrow agreements, E-41, which is the escrow agree-

ment of the Gary-Wheaton bank, and E-46 to E-66, inclusive, being the Bon Air and the Horwath records; E-71, E-72, E-77, E-78, E-81, E-82, E-83, E-84, E-85, E-86, E-87, E-88, E-89, E-90, E-91, and through to E-95, inclusive; E-97 to E-100, inclusive, and E-102, being the 1939 Bon Air expenditures, ledger sheets; and O-207; Exhibits X-1 to X138, inclusive; X-139 to X-164, inclusive; X-170, X-171, X-172-D, F, G, H, J, K, L; 173-V, W, T, Q, P, N, M, H, F, D, W, U, T, O, R, Q, P, N, H, G, E, C, F; X-174-A, C, D, E, F, H, J, L, M; X-178, X-181, X-182, X-183, X-184, X-185-A to V, X-191, X-191-A to X-191-QQQQQ, X-194, X-200 to X-207, inclusive, and other evidence in the record to determine the amount of net cash income reported by the defendant William R. Johnson for the years 1932 to 1939, inclusive.

Q. Can you state what that amount is?

Mr. Thompson: We object to that as improper, to lump all of these things into one mass. It is not competent proof under any particular count of this indictment; no proper identification of the evidence which the witness is to consider has been made; it is not a proper hypothetical question; it does not contain all of the elements required for such a question. It is otherwise immaterial, so far as the evidence in is concerned; in no way connected 1057 with the defendants.

The Court: Overruled.

The Witness: The total amount of income reported over that period was \$1,188,041.85. Adding to that the amount that he had on hand as of the beginning of 1932, the total is \$1,256,041.85.

Based on those exhibits which I have enumerated and the other evidence in the record, I have made a computation as to the expenditures of the defendant, William R. Johnson, for the years 1932 and 1939, inclusive.

Q. Will you state what that computation is; what the amount is?

Mr. Thompson: We object to that on the ground that you cannot lump expenditures over a period of ten years or so. There is no identification of this requested answer to any particular count of the indictment in this case; that the offered proof will not prove, or tend to prove the taxable income of the defendant Johnson for the specific years 1936 or 1937 or 1938 or 1939, which are the only years covered by the indictment; and proper founda-

tion has not been laid, and the question is not properly stated; the hypothetical question does not contain all of the elements required in such a question, and it does contain elements which are improper to consider in such a question.

The Court: Overruled.

The Witness: The total amount of those expenditures was \$1,730,391.39. That is for the period 1932 to 1939, inclusive.

I have made a computation from the figures which I have just given as to what the excess of expenditures over net cash income reported was over that same period of time.

Q. Will you state what that amount is?

Mr. Thompson: We object on the grounds already stated to the last two questions on these computations.

The Court: Overruled.

1058 The Witness: The amount of such excess of expenditures over income is \$474,349.54.

With the exhibits just a moment ago enumerated, and the other evidence in the record, I have made a computation to determine the total amount of gross income of the defendant Johnson for the calendar year 1936.

Q. What is the amount, from your computation, of the gross income of the defendant Johnson for the calendar year 1936, according to your computation?

Mr. Thompson: If the Court please, there is no identification of any document which is being used by the witness, or any of the evidence that has been produced here in court from which he has made his computation. We object that the question is not in proper form, the proper elements have not been stated, and the elements being included in the general character of the question are not proper to be considered.

The Court: You are making reference to those exhibits and the evidence in the record?

Mr. Hurley: He used those as a basis for his computation.

The Court: Overruled.

The Witness: \$547,942.38.

Mr. Hurley: Are you able to state the amount of net income of the defendant Johnson for the calendar year 1936, according to your computation, based upon exhibits I have enumerated and the other evidence in the record?

Mr. Thompson: Same objection, your Honor.

The Court: Overruled.

The Witness: The income I gave you, Mr. Hurley, was the net income, subject to tax after allowance of all statutory deductions.

Mr. Hurley: So that your previous answer was on the basis of net income rather than gross income?

1059 A. That is right.

I am able to state the amount of tax still due by the defendant Johnson to the United States for the calendar year 1936, after allowing credit for the amount of tax shown on defendant's tax return for the year as shown by Government's Exhibit R-10, in evidence.

Q. And what is the total amount of tax still due the United States, according to your computation, for the year 1936?

Mr. Thompson: We object to the question on the ground that the proffered hypothetical question does not contain the essential elements of such a question; no proper foundation has been laid for the answer to the question by the witness.

The Court: Overruled.

Mr. Thompson: And elements are being injected into the question which are not pertinent to the income for that year, and elements are being omitted which are essential.

The Court: Overruled.

The Witness: \$268,041.09.

I have made a computation based on the list of exhibits which you have read to me and the other evidence in the case to determine the total amount of gross income for the defendant Johnson for the year 1937. I am able to state the amount of the net income of the Defendant Johnson for the calendar year 1937 according to my computation.

Q. What is that amount?

Mr. Thompson: For the same reasons we have assigned as to the similar question for 1936 we object to this question.

The Court: Overruled.

The Witness: \$1,047,129.77.

I am able to state the amount of the tax still due by the defendant Johnson to the United States for the calendar year 1937, after allowing credit for the amount of

tax shown on the defendant's return for that year, 1060 Government's Exhibit R-11 in evidence.

Q. And what is the total amount of tax still due to the United States, according to your computation for the calendar year 1937?

Mr. Thompson: On the same ground that we objected to a similar question that was for 1936, we object to this one.

The Court: Overruled.

The Witness: \$588,064.20.

I have made a computation based on the exhibits I have heretofore had read to me and the other evidence in the case to determine the total amount of net income of the defendant Johnson for the calendar year 1938. I am able to state from that computation the amount of net income of the defendant Johnson for the calendar year 1938, according to my computation.

Q. What is that amount?

Mr. Thompson: On the same grounds we objected to a question of like import with respect to the year 1936, we object to this question.

The Court: Overruled.

The Witness: \$935,353.80.

I am able to state from my computation the amount of tax still due by the defendant Johnson to the United States for the calendar year 1938, after allowing credit for the amount of tax shown on Defendant's return for that year, being Government's Exhibit R-12 in evidence.

Q. What is the total amount of tax still due the United States according to your computation for the calendar year 1938?

Mr. Thompson: On the same ground that we objected to a similar question for the year 1936, we object to this one.

The Court: Overruled.

The Witness: \$596,521.95.

I have made a computation based upon the exhibits 1061 which were enumerated heretofore and also the other evidence to determine the total amount of the net income of the defendant Johnson for the calendar year 1939. I am able to state from that computation the amount of the net income of the defendant Johnson for the calendar year 1939, according to my computation.

Q. What is that amount?

Mr. Thompson: On the same ground we have objected

to a like question for the year 1936, we object to this question.

The Court: Overruled.

The Witness: \$961,504.77.

I am able to state from that computation the amount of tax still due by the defendant Johnson to the United States for the calendar year 1939, after allowing the credit for the amount of tax shown on Defendant's return for the year, being Government's Exhibit R-13 in evidence.

Q. What is that amount of tax still due to the United States according to your computation for the calendar year 1939?

Mr. Thompson: On the same grounds we objected to a like question for 1936, we object to this question.

The Court: Overruled.

The Witness: \$520,497.10.

Cross-Examination by Mr. Thompson.

In making my calculation I am assuming that Mr. Johnson had on hand on December 31, 1931, a certain stated sum of money, \$68,000. \$68,000 was all the cash he had on hand on that day, according to my assumption, per the testimony of Mr. Wilson. I ignored the \$10,000 that Mr. Wilson testified Mr. Johnson said he had in his bankroll at that time.

Q. You had before you at the time you were making these examinations, all of Mr. Johnson's returns from 1932 on, and also the returns of Mr. Johnson for the prior years, didn't you?

1062 A. I don't think I referred to them.

Q. You had them before you?

A. I don't know. I am not sure that I did. I have seen them. I don't know whether I had them before me. I don't recall having his '31 return. I don't recall having his '28, '29, '30 and '31 return.

Q. You had his '27 return, didn't you?

A. I don't recall any of those returns that I used in connection with this computation.

Q. I did not ask you whether you used them. You had them before you, didn't you?

A. I have seen them; yes. I have seen those returns.

I have not seen any prior to '27. I don't know that they have been destroyed by the Government. I didn't try to get the returns 'way back to the time Mr. Johnson com-

menced making his return. I don't know if my chief, or someone in the department did.

Q. Did you note from the returns prior to 1932 that Mr. Johnson had reported a very large income over a period of some ten years, each year?

A. The returns for '27 through '31 inclusive, show reasonable amounts, yes. I have never totalled them.

Q. You never made any effort to determine whether or not Mr. Johnson had disposed of all this income and had only \$68,000 left in 1931?

A. It was my understanding that he had disposed of it in '31.

Q. You understand that from what Mr. Wilson testified to?

A. No, from the revenue agent's report.

I have taken the exhibits and the testimony of figures and have used those in computing the additional tax. I com-

puted \$13,115.00 expended with respect to acquiring 1063 his interest in the property at 9730 South Western Avenue for the land, and \$22,400.00 for the building.

I did not accept the fact that \$22,400.00 was paid for the building by Mr. Skidmore, as testified to by Mr. Nadherny.

Q. You ignored it, then? You did not accept it?

A. I relied on Mr. Johnson's statement that he owned the property. He told me that he owned the property, yes, sir.

I am not using my own testimony as part of the testimony on which I made my computation, except I am using Mr. Johnson's statement he made to me.

Q. And you ignored the testimony of the architect that Mr. Skidmore paid him \$22,400?

A. Mr. Nadherny's statement was that he thought he was paying it as the agent for Mr. Johnson.

I did ignore the testimony of Mr. Nadherny that Mr. Skidmore paid the \$22,400.00. I did ignore the testimony of Mr. Goldstein on cross-examination that Mr. Johnson acquired one-half of this property and that Mr. Skidmore acquired the other half of it?

Q. You took the top figure always in making a computation. Whatever the evidence showed against Mr. Johnson you took the top figure?

A. Not in all cases.

Q. Which case did you take other than the top figure?

A. I think Mr. Nadherny said he got the eight-hundred dollar fee. I did not include that in there.

Q. In connection with what?

A. Building the building at 9730.

Q. Well, he said Mr. Skidmore paid him that, didn't he?

A. Yes. He said Mr. Skidmore gave him the money.

1064 I used the amount of \$19,000 in my calculations as the amount spent by Mr. Johnson in acquiring the Dells property.

I charged \$95,056.73 to Mr. Johnson as the expenditures in acquiring the real estate now known as the Bon Air property. The items that made up that amount were the original purchase price of the Bon-Air proper, \$75,000; then that which is represented by Exhibit E-32, \$7600; Exhibit E-33, \$8,456.73; E-34, \$4,000. That is all the Bon-Air property.

The \$60,000 I show as the Curran farm, that is a different subject. I did not include that as part of the Bon-Air, but as part of the expenditures.

Q. All right. Did you include any other items out there in the Columbian Gardens whatever?

A. Yes. There is one for the Columbian Gardens Addition, of \$17,500.

Q. What else?

A. That is all.

The \$7500 deposit that Mr. Goldstein paid on the contract for the purchase of certain other property from the Evanston Bank in 1939 is part of the \$17,500, \$10,000 with the Chicago Title Co., \$7500 with the Evanston Bank. I included that. I did not use those figures solely on the testimony of Mr. Goldstein. I had the records of the Chicago Title and the testimony of the bank man as to amounts. As to the identity of Mr. Johnson as the payer of the sums I used Mr. Goldstein's testimony exclusively.

Q. What ground did you use as the expenditures of Mr. Johnson on the Division and Dearborn property?

A. In addition to those which are shown on his return as capital expenditures, I used the Air Comfort figure of fifteen thousand, three hundred and ninety.

Q. Is that all you used?

1065 A. In addition to those which are reflected on his return.

Q. What are shown on his returns as capital expenditures?

A. Classified as improvements and furnishings.

The Witness: I did include in these computations capital

expenditures for acquiring of property. I have the acquisition of the equity. I charged \$16,000 to Mr. Johnson for that.

Q. You used Mr. Tavalin's estimate that it was somewhere in the neighborhood of sixteen thousand, is that right?

A. I think he said sixteen thousand. That was my recollection.

I used whatever he said on the subject.

I next used the payment of the second mortgage. I charged him with \$45,000 for the payment of the second mortgage. I charged him the face value of the mortgage, \$45,000.

Q. You gave no consideration to the testimony that he bought part of the notes at a discount, did you?

A. That was not clear. I had no way of telling what the amount was.

So I took the top figure of \$45,000. I added on there the payment of the first mortgage. I charged him with \$150,000 for that and the delinquent taxes which were capitalized. I did not capitalize those. I took the figures of Mr. Brantman as being the total of the delinquent taxes. I used that as the capital investment and put them on there as an expenditure. I charged \$15,205.48 for that. That is only 75 per cent of the total delinquent paid.

Then the Lincoln Park Improvements and furnishings. They are spread over a period of years. Those appear on the return with the exception of the Air Comfort expenditure. The apartment furnishings and so on, that all appears on his income tax return.

The items that constitute the total that I calculated 1066 as the expenditures of Mr. Johnson for the year 1936, are income taxes, payment of the first mortgage, Lincoln Park Building improvements and furnishings, the Thorndale and Glenwood improvements, or furnishings, and the purchase of the first piece of the Dells property. The total that I have for his expenditures for the year 1936 is \$84,820.47. The total income Mr. Johnson reported for the year 1936, after giving a credit for depreciation when he arrived at his total cash income, was \$173,425.28. I am just adding that as I go along. In other words, according to my computation he spent \$84,000 in round figures in 1936 and reported an income of \$170,000 odd.

The items that are used in my calculation of the expenditures for 1937 are income taxes paid, Lincoln Park improve-

ments, Thorndale-Glenwood furnishings, the second Dells property, purchase of Albany Park Bank Building, purchase of the land and construction at 9730 South Western, purchase of the Sunny Acres Farm, and the capital items, improvements which were put on the farm after he got it, such personal expenses as were shown on the farm books, and the DuPage real estate. The last was the DuPage farm that was adjacent to the Sunny Acres place, \$16,050. I charged him with the cost price of the Albany Park Bank Building. That was on Goldstein's testimony, and I charged him the full amount on 97th and Western that was spent by anybody, so far as any testimony is concerned. The total I charged on 97th and Western was \$35,515.00. The second payment on the Dells I charged him the amount Goldstein testified to, \$9,000. The capital expenditure on farm, for 1937, was \$102,223. The items that made up the \$102,223 are building improvements, \$74,933.41; cattle, \$10,946.99; chickens, \$103.75; small tools, \$1,332.82; machinery and equipment, \$13,942.63, auto truck, \$583.50; harness \$379.50.

He didn't sell any cattle that year. I don't know that 1967 he sold any chickens.

Q. Well, you didn't take the cash receipts for the year and deduct them from disbursements, where they were applicable, did you?

A. Where they were applicable, yes. The next year when he sold cattle I did deduct them, deduct the amount, cost price of those cattle sold.

Chickens are shown in his profit and loss farm statement. The loss he deducted covering the operation of the farm includes such figures. That is all shown on his income tax statement.

The items of expenditure for 1938 are income taxes for the year '37 and in '38 the Lincoln Park Building improvements, Thorndale-Glenwood furnishing, Sunny Acres capital item, personal expense, Sunny Acres, Bon-Air property purchase, Bon-Air Catering advances, and the loan to William R. Skidmore.

Q. Now, the capital item for 1938 of the farm? I think you said they were sixteen thousand and some odd dollars?

A. I subtracted from that the cost of the cattle sold in '38.

Q. What were the cattle items for '38?

A. In here it is, \$12,375.27, which is the total he purchased, and makes the cost of the cattle as giving him a credit for that.

The items which make up this 16,000 are cattle purchased, \$8,519.14; new construction and improvements, \$4,420.82; miscellaneous items, \$3,869.30. That makes the \$16,000 odd.

Q. Now, as to the expenses out at the Bon-Air, you assumed that he made all of those?

A. He told me he did.

1068 I am using my own testimony there as the basis of that computation.

As to 1939, the capital expenditures that I say Mr. Johnson made are income taxes paid, Lincoln Park building improvements and furnishing, capital expenditures for the farm, advances to Bon Air, both as per the book record and those not on the books, purchase of the Curran farm, and the deposits in connection with the Columbian Garden real estate.

Q. What about the item of Bon Air shown by Exhibits E-42, 43, 44, and 45, ledger sheets of Albert Pick & Company, how much did you charge as expenditures of the Bon Air Catering Company for 1939?

A. You mean in connection with the Bon Air? You said the Bon Air Catering Company. I didn't charge anything on that. But I charged in my expenditure statement for Mr. Johnson, \$5,577.30. I eliminated all which were shown as having been paid by the Bon Air Catering Company.

That is, I eliminated the items that were on the Bon Air Catering Company books showing that they had been paid on these sheets. I included \$3,000 that was shown on Mr. Reedy's statements. I also included all of Mr. Nadherny's architect fees, notwithstanding his testimony that Mr. Skidmore paid part of them.

I included in Mr. Johnson's income for 1936 all of the one hundred dollar bills that came from the Lawndale Currency Exchange. That is, I included all of the deposits made by the Albany Park Currency Exchange in Mr. Johnson's income for that year, with the exception of those which were made on certain paydays which Mr. Marcus said he might have occasion to redeposit. If there were any such days I didn't include those.

1069 For '36 there were no such days. I added into

Mr. Johnson's income for 1936 the currency exchanged at the Northern Trust Company. That is, all the money that was exchanged over at the Northern Trust Company, according to this testimony, I put as part of

his income. I assumed that all the checks cashed at the Northern Trust Company were Mr. Johnson's income. Checks cashed at the Albany Park Currency Exchange. Gamblers' checks. Those marked on those sheets as gamblers' checks. The same way with the Northern Trust Company. Those that were shown as having been cashed by Mr. Jack Sommers. Gamblers' checks. Not all checks. Mr. Marcus had his records marked in such a way that those gamblers' checks could be distinguished from all the other checks. So I took only the gamblers' checks. I distinguished the gamblers' checks that were on Mr. Marcus' records by the marks which he had opposite those checks, J. S., M. D., No. 1, 2, 3, H. S., D. D., K. L. I calculated those all as gamblers' checks. I added all of them together and said that is Mr. Johnson's income.

All checks cashed by Mr. Creighton in 1936 at the Mid City Bank to which Mr. Lawrason has testified were added to Mr. Johnson's income. That whole string of checks that Mr. Lawrason testified about yesterday that he saw through this machine that had A. J. Creighton on the back of them for 1936 was added to Mr. Johnson's income. That is all for '36.

That adds up to \$533,216.94, and I gave him credit for what he returned as income taxes. I gave him credit for the gross income from gambling, \$148,300, in that year. I calculated that all this other income that I have been talking about was income from gambling. In making this calculation I assumed that Mr. Johnson owned all of the gambling houses that have been named in this testimony and that all the checks cashed by any of these defendants were checks representing income of Mr. Johnson and 1070 that all the currency exchanged by any defendants represented income of Mr. Johnson. That is the way I arrived at that figure.

For 1937 I added to Mr. Johnson's income the same kind of items and all the one-hundred dollar bills that the Roosevelt Agency sent over to the Lawndale Currency Exchange that was mentioned in that testimony; the currency deposited by the Albany Park Currency Exchange, with the exception of those days which were deposited on such days as could have been pay days, according to Mr. Marcus' testimony, and I eliminated those. I charged him up with \$87,100. for that; all currency testified to here that was exchanged at the Northern Trust Company. I

took the estimate that the Gentleman testified to here as the amount. I took an estimate of \$100,000 a year. I didn't pay any attention to the cross examination where he said that it might have been \$90,000, \$80,000, some other figure. Checks cashed at the Albany Park Deposit and Exchange. Those were the gamblers' checks that were cashed there. I mean all these J. D.'s and D. D.—J. T.'s. That amounted to \$623,690 in that year. I added all that in to what Mr. Johnson's income was for that year. All of the checks that were found at the Mid City which had the endorsement of Mr. Creighton, per Mr. Lawrason's testimony—I added that to Mr. Johnson's income. That is all for the year 1937. This makes a grand total of \$1,056,844.59. I allowed him the credit for what he reported gambling that year and I found that he still had a net income on which he had not reported of \$798,469.59.

Q. So that in 1937 you added up all of the checks that were cashed by all of these defendants here as part of Mr. Johnson's income, is that right?

A. Whatever I have stated. I don't know whether I have got them all over there or not.

1071 All of the cash exchanged by any of these defendants was income of Mr. Johnson and all of the hundred dollar bills that were delivered out of a bank down to the Lawndale Currency Exchange, I counted that as Mr. Johnson's.

For 1938 the items composing the income as I calculated it were hundred dollar bills of the Lawndale, currency exchanged at Albany Park, currency exchanged at the Northern Trust, checks cashed at the Albany Park, checks cashed at the Mid-City, checks deposited at the North Shore, checks deposited at the Central National; those latter two by the Lawrence Avenue Currency Exchange.

I charged \$20,000 in \$100 bills which were ordered out of the downtown banks by this Roosevelt Agency and there was a further statement that they got those for Mr. Flanagan. That is the basis of my figures. I am calculating all those \$100 bills as a part of Mr. Johnson's income for 1938. No one that I know stated that he got the bills.

Q. Now, what about the checks that you added to his income? Was that all of the checks cashed?

A. The Lawrence Avenue Currency Exchange.

Q. That is the Marcus exchange, isn't it?

A. Yes, sir.

Q. All checks cashed by J. D., M. O., and what have you, on them; is that right?

A. Yes, sir. Mid-City—that is Mr. Creighton. All of the checks cashed that bore the endorsement of A. J. Creighton were added to Mr. Johnson's income. Gamblers' checks deposited at the North Shore and the Central National by the Lawrence Avenue.

Q. How did you figure out that they were gamblers' checks deposited at the North Shore and the Central National?

The Witness: The total of the checks which 1072 cleared through Johnson's account on the Lawrence Avenue books, as per the testimony of Mr. Bagshaw.

Q. Through the Johnson account?

A. Reserve for uncollected funds. That is Mr. Bagshaw's testimony.

Q. You are assuming that is Johnson's account?

A. Oh, no; he stated that.

Q. I know, but you are assuming—

A. \$1,100,000.00.

I took that to be William R. Johnson, the defendant in this case. I don't think that Mr. Bagshaw stated that. I didn't understand him to say that it might be "Miss Johnson." He might have. That \$1,100,000 was 74.87% of all the checks that were deposited by the Lawrence Avenue Currency Exchange. I used that percentage in separating the gamblers' checks from the checks that were deposited at the two respective banks during both of those years. For '38 at the North Shore, they total \$66,305.29; at the Central National, the total is \$147,105.71, or a total of \$213,411.06. I took the total of this year in this computation of mine of 74 point something, and calculated the amount that belonged to the gamblers. Then, anything that belonged to the gamblers belonged to William R. Johnson, and that is included in my computation. That is all for 1938.

That makes a grand total of \$939,807.12.

Q. That includes all of the money that you think that all of these defendants either exchanged, or all of the money that was received in the cashing of checks by all of these defendants that operated these various gambling houses; is that right?

A. Whatever these records show, yes.

For the year 1939 the items which composed Mr. Johnson's income, according to my computation, are the 1073 checks cashed at the Washington Park Currency Exchange, ran by Mr. Snoddy. Mr. Creighton cashed checks there—he said "Forty to fifty thousand." I used forty. The currency exchanged at the Northern Trust Company. I used just \$40,000 for that, because Mr. Denning said \$40,000 was the estimate. I took the estimate. \$886,499.30, which is the balance of the \$1,100,000, which was not considered in 1938, of the gamblers' checks that went through Lawrence Avenue. I took all of this reserve for uncollected funds which Mr. Bagshaw said was on the Lawrence Avenue books and I called that the William R. Johnson account, and that was added to his income for 1939, less what I have taken out for 1938. I called that part of Mr. William R. Johnson's income. That is all I put in there for 1939.

The grand total is \$966,499.30.

Q. Are there any other sources of information that you have used for the computation and calculations that you have made, other than the exhibits which were enumerated by Mr. Hurley in his questions to you?

A. Exhibits and the testimony in the event there were no exhibits.

Q. You used other evidence, did you?

A. Yes, sir.

Q. What evidence, other than the exhibits enumerated, did you use to make your calculations as to the expenditures for 1936?

A. None—Mr. Goldstein's testimony on the Dells.

That is all, other than the exhibits.

Q. What items of evidence or testimony did you use for expenditures for 1937, other than the exhibits enumerated?

A. Mr. Goldstein on the second part of the Dells; Mr. Goldstein on the bank building; Mr. Goldstein on the 1074 land at 9730 South Western; Mr. Nadherny on the building at 9730 Western; Mr. Goldstein on the DuPage farm, the one adjoining Sunny Acres.

Excepting as to the one statement of Nadherny about the building at 9730 Western Avenue, all of the rest is Goldstein plus the exhibits.

For 1939, in addition to the exhibits I used the state-

ment of Mr. Johnson of March 27th, about the loan to Skidmore and Mr. Goldstein on Bon Air. Besides that written statement read into the evidence is that testimony of Mr. Johnson's statement to me, and Goldstein. I used my testimony on the farm capital expenditures. That applies to '37, also.

In '39, in addition to the exhibits enumerated, I used the testimony of Mr. Goldstein on the Curran farm and on the Columbian Gardens. I think the rest of them are covered by exhibits.

Q. Just Goldstein and the exhibits, plus your testimony of what Mr. Johnson told you in an interview?

A. I don't think that applies to '39.

Q. You don't think that applies to '39?

A. No.

Q. Just Goldstein and the exhibits, then, in '39?

A. Yes.

In addition as to the 1936 income, other than the exhibits enumerated in making my calculations, I used the testimony of Mr. Denning, the Northern Trust Company man on the currency exchanged, Mr. Lawrason's testimony, and that is evidenced by the record also. That is for 1936—everything else is per exhibit.

Q. Now, what did you use as the testimony to connect the currency exchanged at the Northern Trust Company with the defendant William R. Johnson?

A. I do not know of any specific testimony of 1975 any one person. It is just the general testimony as to the ownership.

Q. Oh, you determined that Mr. Johnson was the owner of whatever produced this cash, is that right?

A. This computation is based upon that fact.

Q. Upon that assumption?

A. On that assumption.

Q. What testimony in this record did you use in your calculations to determine that the checks cashed by Mr. A. J. Creighton were part of the income of William R. Johnson in 1936?

A. I could give you the same answer for that also; that is, general testimony.

I assumed that all the checks cashed by A. J. Creighton in 1936 were income of William R. Johnson. I can not point to any particular item of testimony that I used for the basis of that assumption right now.

Q. Now, what evidence did you use in the evidence as the basis for your calculation that the checks cashed in 1936 at the Northern Trust Company by Mr. Jack Sommers were part of the income of Mr. William R. Johnson?

A. I think I could give you the same answer to that one also.

I can not point to any particular bit of testimony in this record which I used as the basis for that assumption.

Q. What was the basis for your assumption that the checks cashed at the Albany Park Currency Exchange in 1936 were part of the income of William R. Johnson?

A. I would give you the same answer.

Q. And if I asked you with respect to each of the items that you used in calculating the income of William R. Johnson for the year 1937, 1938, and 1939, respectively, you would give me the same answer in substance, would you?

A. With the exception of '39, the testimony of the two people at the Lawrence Avenue Currency Exchange, Mrs. Koop and the janitor who saw Mr. Johnson in there dealing with Mr. Brown. Otherwise it would be just the same.

Q. You then assumed in making your calculations for 1939 that two witnesses have testified that Mr. Johnson dealt with Mr. Brown in 1939, have you?

A. That would be one specific instance I could recall in that testimony.

Q. Do you know what particular dealings you are considering as the basis of your assumption with respect to transactions with the Lawrence Avenue Currency Exchange that Mr. Johnson had dealings with him?

A. I do not know the nature of the dealings from the testimony.

Q. All right, your assumption then of all these facts with respect to these various items which you have added together to make up Mr. Johnson's income taxes, or income for these four years, are as you have stated them, are they, the general record without any ability to state any specific thing, excepting this one thing you have last stated, is that right?

A. I do not recall any right now.

Q. Can you tell me on what basis you assumed that the checks cashed and the currency received by John Flanagan at the Lawndale Currency Exchange was the property and income of William R. Johnson?

A. Just general ownership of all the places.

Q. Just general ownership of all the places?

A. Yes, uh-huh, yes, sir.

Q. Just what places did you assume that Mr. Johnson owned in making your calculations?

1077 A. Quite a number in the testimony. I don't just recall all the names.

I assumed that he owned the Southland Club, the 119th and Vincennes, the Select Club, and the Harlem Stables. I did not take into consideration the Harlem Club—I don't remember of ever having heard of that. I have read the indictment in this case. I have forgotten that part of it. I don't know anything about this Harlem Club that was out in Maywood. I included the 4020 Club as one owned by Mr. Johnson. I do not recall the bookie up on School Street. I do not recall the Mayfair Club. I included the Northland Club. That is if there was any money came from that in these figures I would have included it. I have nothing to show that any money came from that Northland. I do not know who ran the Northland Club. I don't know if it ever ran. I know there was some party here testified that some work was done up there. That is all I know about the Northland. I heard some carpenters worked up there—that is all I heard about it. That is all I know about it. I don't know anything about the Proviso Club.

Q. What about the Lincoln Tavern, did you include that in Mr. Johnson's property?

A. During the year of operation, whatever year it was.

Q. What?

A. If they operated in '36, I do not know when it operated.

Q. I mean in these four years we are talking about now?

A. If it operated, yes, sir.

I don't know whether it operated in the four years.

Q. You included the Harlem Stables, I think you said, as one of the properties owned by Mr. Johnson, is that right?

A. There was some checks, records at the Albany 1078 Park, showing that checks came from the Harlem Stables. Those checks would be included in my computation.

Q. As Mr. Johnson's income?

A. Yes.

Q. Did you assume in your calculations that Mr. Johnson owned the Club Moderne up here by Glencoe or Highland Park somewhere?

A. I do not know about that one.

Q. Did you assume that Mr. Johnson was the sole owner of the Bon Air Country Club in your calculations?

A. I took that from what he told me, not an assumption there.

I did assume it in my calculations, based on my own recollection of what he told me.

Q. Did you assume that Mr. Johnson owned the Service Bureau, or whatever you may call it, from which the service was sent out to bookies over this telephone system that was talked about here in evidence?

A. I am not familiar with that testimony.

Q. You did not assume that he owned that network of telephones, then?

A. I did not have any assumption at all on that. I don't know.

Q. Can you point out one item of testimony on which you based your assumption that Mr. Johnson owned the 4020 Club?

A. I can't recall any now.

Q. Can you point to a single item of testimony on which you based your assumption that Mr. Johnson owned the Southland Club?

A. No, I can't think of one.

Q. All you would answer as to each of these clubs, if I asked you, would be that you just took the general 1079 testimony, is that right?

A. There was one lady said he had something to do with the Horse-Shoe, raising the limit out at the Horse-Shoe. I can't think of that one.

That would be one specific item I can now remember. I wouldn't say that I used that as a basis for my calculation that Mr. Johnson owned the Horse-Shoe Club, because this woman said she talked to him about raising the limit. I didn't give any consideration to her statement about raising the limit. I don't think that I did give any specific consideration to it.

Q. Can you name now one single item of testimony that was not included in these exhibits that were enumerated by Mr. Hurley in his question as the basis of your assumption that Mr. Johnson owned any of these gambling clubs?

A. Nothing specific, just general.

Q. Now, Mr. Clifford, assuming that Mr. Johnson did not own these gambling houses, he has returned all of the taxable income that he had for the year 1936, hasn't he?

A. No. You got your expenditure statement which showed he spent more than he reported.

Q. In 1936?

A. That is only one year out of the whole business.

Q. You do not lump people's income when you check their return for any particular year, do you?

A. I take into consideration, I try to take into consideration in making a net worth statement as many years as I can get.

Q. All right, let us go back, 1937, 1938 and 1939 had not happened when Mr. Johnson reported his income for 1936, had it?

A. No, sir.

1080 Q. If I eliminated the testimony that Mr. Johnson owned these gambling houses, according to my calculations, he had no taxable income for 1936 which he had not reported.

Q. In 1937 did he report all of the income that he had earned, assuming he did not own these gambling houses?

A. In that year he reported an income of two hundred and sixty-four thousand, and he spent four hundred and sixty-five.

That would assume he did not report the full income. Assuming that he spent \$465,000 in 1937, then the income he reported was not sufficient to take care of the expenditures in that year.

Q. What about the excess income that he reported for 1936, '35, '34, '33 and '32, and the seventy-eight thousand dollars he had in his possession in '31?

A. For my figures, they do not include any personal expenses at all, he would have an excess.

Q. In other words, he would have more money accumulated by 1937 than he spent in 1937, wouldn't he?

A. Assuming that he had no personal expenses, no personal expenditures. I do not have any for him; but if he had those, then based on your assumption he could not have had an excess.

Q. Well, if he lived with his mother and it didn't cost him anything to live, he would get along all right, would he?

A. Yes.

Q. How much short would he be?

A. It depends on what his average per year was, if he had to pay for himself—

Q. Has he got anything left to live on after you take out the expenditures for 1937?

A. According to my figure he would have about five thousand dollars a year to live on.

1081 I think he would have to skimp to get by on that over that period of time even if he was living at home with his mother and the property she owned was paid for.

Assuming that in 1938 he didn't own any gambling houses he would be \$400,000 short.

Q. That is if you take all of the reported income from 1931 down to 1938, and what you say he had in the box, seventy-eight thousand, then deducted expenditures that you have calculated up to and including 1938, he would be short four hundred thousand, would he?

A. Yes, sir.

That, of course, is assuming that he bought the Albany Park Bank Building and paid for it, bought all of 97th and Western and paid for it, bought all of the Dells property and paid for it, bought all the Bon Air property and paid for it. That assumption does not depend entirely on Mr. Goldstein's testimony. Mr. Johnson influenced me by his testimony to me—I mean my record of what he told me. I don't think you can read my record. That is Gregg (handing). My recollection is that I made that shorthand notation in that little book the noon after I finished talking to Mr. Johnson. My recollection is that I recollected at noon after I talked to Mr. Johnson, what he had said to me in the morning and I then put it down in this little book, in shorthand.

Q. Then we come to 1939. How far did he get by that time, assuming he did not own any of these gambling houses, taking all the rest of your assumptions?

A. On the basis of the expenditures per this statement, he was \$78,000 in the red—shy, rather.

1082 He spent \$347,000 and reported only \$268,000. He needed, altogether, \$475,000 to come out even. That is still assuming that he bought and paid for all these properties that Goldstein testified about.

Q. How much was Mr. Johnson's excess income prior to

the end of 1931 as shown by his income tax returns from way back in 1921 or 1922?

A. As far as my information goes he had—didn't have an excess, he was in the hole.

Q. Well, you mean by that that according to this statement of Mr. Wilson, he had \$68,000—or, \$78,000 in the box; didn't say how much he had under the back stoop of the house, did he?

A. I don't know.

Q. Or buried out in the garden?

A. I don't know that.

Q. So you are assuming that he had come up to the beginning of 1931 dead broke, accumulated \$78,000 in 1931, and that is all he had?

A. No, he spent a lot of money, according to the records, during '31. I don't know whether he was broke at the beginning of '31 or not.

I don't remember what he spent for '31. I was not familiar with all the details.

Q. Well, he bought the building out there at 4020 Ogden avenue, didn't he, paid \$8,750 for it, and assumed a mortgage of \$8,750, that is \$17,500, isn't it?

A. I don't know about '31.

Q. That is "the" lot of money he spent in '31?

A. I don't know the details.

I don't know whether a couple of years prior to that in 1929 he bought another old shack down on Pulaski or 1083 Crawford, and paid something like \$20,000 for it.

I don't know the nature of the expenditures during '31, but he spent a big pile of money in '31, according to the records of the Internal Revenue Department—I don't know the nature of them. I don't think there were any records produced here.

Q. You are not taking that into consideration, anything that is not in evidence here, are you, Mr. Clifford?

A. Not in making this expenditure statement. I am just doing that in answering your question.

This is based only on testimony or evidence. I have already testified to all of that.

Q. But I am getting into this business prior to 1931, now, to test this \$78,000 you are talking about. Now, did you calculate his income from his returns on file for the ten years prior to 1932?

A. No, sir.

Mr. Thompson: We move the Court to strike from the record the calculations of the witness on the ground there is no proper foundation laid for the calculations and that it appears now that the calculations were made by taking into consideration improper elements and by omitting from consideration elements which should have been considered; and that the testimony of the witness is an invasion of the province of the jury in weighing the testimony of witnesses in this record, evidence in the record; and that there is no proof of any character justifying his assumptions that many of the items he has testified to are the income of the defendant William R. Johnson.

The Court: The motion will be denied.

Redirect Examination by Mr. Hurley.

1084 Q. Did you, from the calculations that have been
inquired about here, Mr. Clifford, arrive at what the defendant William R. Johnson—what he had on January 1, 1940?

A. According to this statement he would have had nothing.

Mr. Hurley: I offer in evidence at this time, if the Court please, Government's Exhibit X-252, for identification.

Mr. Thompson: We have no objection to that.

The Court: It may be received.

(Said exhibit so offered and received in evidence, was thereupon marked GOVERNMENT'S EXH(BIT X-252.)

1085 *Recross Examination by Mr. Thompson.*

The net cash income of Mr. Johnson for the year 1932, as reported by him, is \$70,677.54. I would add to that the depreciation which I allowed.

Q. The net cash income available for expenditures?

A. That is right; \$1,817.41. That is added to the \$70,000 figure.

The Witness: And in that year he realized from the sale of an investment which is not included in the other figure, the amount of \$289.45, and there was an error on the return, which reduced this figure, \$1,415.56, which brought the net to \$72,368.84.

For 1933 the amount of net shown on the return is \$74,667.81. Adding the depreciation of \$1,817.41, and an error

of \$2,097.13, brings the total—I will have to subtract it, because I have carried it forward. That brings it to about \$78,572.35.

1934, the figure reported, was \$116,214.53. Adding the depreciation of \$9,007.35, plus an adjustment of \$16,129.36, makes a total of \$141,451.24.

1935, the amount was \$57,878.88, plus the depreciation of \$9,942.68, plus a small adjustment of \$605.39, making a total of \$66,426.95.

I am adding these backwards as I go, so I may make an error.

1936, \$161,892.74, plus \$10,410.77 depreciation adjustment, plus a small mechanical adjustment of \$1,132.70, making a total of \$173,436.21.

'37, it is \$248,660.15 for the return, adding the depreciation of \$15,354.95, makes \$264,015.13.

1938, \$101,946.68, plus depreciation adjustment of 1086 \$19,028.47, making a total of \$121,075.15.

1939, \$251,715.47, plus \$17,170.51, makes a total of \$268,885.98.

Q. Now, Mr. Clifford, in making those computations, did you allow any depreciation for the building at 9730 South Western Avenue?

A. I don't know whether that was in the return or not; it was not in the '37.

Q. No, it is not on those returns. I understand, that in your computation as to Mr. Johnson's taxable income, based on the assumptions from your conception of the evidence in the record, you did not make any allowance to him for depreciation on 9730 South Western Avenue, did you?

A. No; I gave him that which was on the return, plus a small adjustment.

The adjustment I have been testifying to is what the returns actually show. In making the assumption that I did in connection with my answers as to what Mr. Johnson's returns should have been for the various years, I didn't deduct any depreciation which would, on my theory, have been allowable to Mr. Johnson on 9730 South Western Avenue. I did not make any deduction for depreciation which might have been allowable to Mr. Johnson on the theory that he owned the Dells property in calculating his income on the assumption I have made. I did not allow any deduction as to the Bon Air property in this calculation. I have no taxes or any books on those three properties that

i have mentioned. Assuming he owned the property he would have been allowed a deduction for whatever taxes he paid on that. I made no allowance or estimate of allowance in this computation. The details of expenditures for 1937, mentioning the items in gross, are: Income tax, \$78,550.70; Lincoln Park Building improvements, \$16,274; 1087 Albany Park furnishings, \$102.75; the Dells purchase, \$9,000; Albany Park bank building, \$59,887.05; 9730 South Western Avenue, land, \$13,115; building, 9730 South Western avenue, \$22,400; Sunny Acres farm, \$145,000; Sunny Acres farm capital items, \$102,223; personal items incurred at the farm, \$3,238.14; that DuPage County real estate, \$16,050.

The totals for 1937 are \$465,840.64.

For 1938, tax \$128,399.72. Lincoln Park building improvements, \$3,680.09; furnishings, Lincoln Park building, \$106.09; farm capital items, \$12,375.27; personal items, \$3,002.49; Bon Air land purchase, \$95,056.73; the advances to the Bon Air Catering Company, \$273,940.93; loan, William R. Skidmore, \$37,000. The total was \$553,561.32.

The breakdown on the land purchased for the Bon Air is the original purchase \$75,000; exhibit E-32, called the Flynn property, \$7,600; Exhibit 33, the Tatge property, \$8,456.73; Exhibit 34, called the gas station, \$4,000.

For 1939, tax \$34,530.94; Lincoln Park building improvements, \$266.08; furnishings, \$2,090.19; farm capital items, \$1,087.04; the Bon Air advances, cost of improvements, \$228,195.07; the Curran farm, \$63,800; and the advances in connection with Columbian Gardens real estate, \$17,500. The total is \$347,469.32.

The items that comprise the Columbia Gardens are \$10,000 in escrow with Chicago Title; \$7,500 in the Evanston Bank.

Q. Those are two separate transactions, then, are they?

A. I don't know whether they are both on the same one, or on two different ones, but they are two different deposits.

I have seventy-five hundred deposited on a contract of purchase from the Evanston bank, and the \$10,000 deposited on a similar contract in escrow at the Chicago Title & Trust Company.

I charged Mr. Johnson with an expenditure in the 1088 aggregate of \$45,000 on that second mortgage transaction on Division and Dearborn property, otherwise called the Lincoln Park building.

Q. What credit, if any, did you give Mr. Johnson in relation to that expenditure on that second mortgage for this payment to him? Apparently it is a debit on Government's Exhibit E-9 of \$2,250.

A. I didn't give him any credit for that.

Q. Didn't you understand that to be some payment to him on this indebtedness of \$45,000, which reduced the amount of the notes that Mr. Johnson held at that time, \$16,000 of notes he then held, by \$2,250?

A. If that is what it was, it would tend to reduce that, yes.

I did not take that into consideration.

Q. Now, Mr. Clifford, you assume in your computation of the proper taxable income of Mr. Johnson, his ownership of all these gambling houses. Did you give him credit for the \$7,200 of rent that he received on 4020 Ogden and 3121 Crawford, which are returned on his income tax returns?

A. I didn't take that out. The depreciation is taken out and he is given credit for that.

If Mr. Johnson was the owner of that gambling house, and paid himself \$7,200 rent, an adjustment taking that out would be proper. The same adjustment would be properly deductible if he was the owner of the gambling house at Division and Dearborn and paid himself rent on that gambling house. I didn't make any such adjustments. In a like situation, if he actually owned gambling houses and real estate, which he does not, in fact, own, according to his returns, then it would not be taxable on the so-called rent that he received.

1089 Q. Now, when you were speaking of the gross income of Mr. Johnson under your assumed basis of calculation, what do you understand the gross income to be?

A. Well, in this case the gross income would be before deduction of any operating expenses; but the figure that I have is supposedly after the deduction for such operating expenses.

Q. Well, you are using, I suppose, as the basis of your definition of gross income Section 22, I believe it is, of the Internal Revenue Code?

A. I do not recall the section. It is defined there.

Q. How do you reconcile the inclusion in that matter of gross income under that definition of the statute this mere exchange of currency down at the Northern Trust Company, for instance, where five thousand dollars of currency

is brought in and exchanged for another five thousand of currency?

A. Well, the testimony was in the majority of the exchanges in the cashing of checks—

Q. No, I am not talking about cashing of checks.

A. Well, the exchanging of money that large bills were paid out.

Q. Yes?

A. They were also some small ones, but the testimony is that these wages, which is the big operating expense, were paid the night before.

Q. Yes?

A. And this was in excess, which could have been used for any purpose other than that, personal or otherwise.

Q. That is the deduction that you made from the testimony in the record, in arriving at your basis for including that exchange of currency as income?

A. The deduction I took, there was no evidence to show it was used in connection with any gambling expense at that time.

Q. Well, the fact he brought in five twenty-dollar 1090 bills and got back one one-hundred bill, would not change the amount of money he had when he came into the bank, would it?

(No audible answer.)

Q. He had the same amount of money when he went out of the bank as he had when he went into the bank?

A. Yes, sir.

I found the expenditures as shown by the computations of Mr. Johnson for the year 1935, Income taxes, \$41,373.56; payment of the first mortgage, \$75,000.00; improvements to Lincoln Park, \$2,059.91; furnishings, \$3,453.81; Thorndale and Glenwood, \$326.00, making a total of \$122,213.28.

And for '34 taxes of \$27,993.00; Lincoln Park Building equity purchase, \$16,000.00; payment of the first mortgage, \$25,000.00; the delinquent taxes capitalized, \$16,205.48; improvements, \$6,030.05; furnishings, \$3,076.40; Thorndale and Glenwood furnishings, \$730.22, making a total of \$94,035.15.

In '33 taxes paid of \$8,610.10; and the balance of the purchase of the second mortgage, \$38,000.00; making a total of \$46,610.10.

'32—just the taxes paid, \$8,841.11; and the second mortgage, original purchase of \$7,000.00; making a total of \$15,841.11.

I had no expenditures prior to that in my computation. I started with a base of \$68,000.00 for January 1, 1932. I used the testimony of Mr. Wilson as the base to start with, \$68,000.

WILLIAM M. RUGGABER, being duly sworn, testified as follows:

Direct Examination by Mr. Plunkett.

I live in Chicago. I am an Internal Revenue Agent. 1091 I worked for the United States Bureau of Internal

Revenue since 1923. My duties as an Internal Revenue Agent are to make examinations and verifications of income tax returns. I had occasion to make an examination of an income tax return for one William P. Kelly. I see him in the courtroom. In the course of my examination I had occasion to have a conversation with the defendant Kelly in my office on January 4, 1940. There was no one else present with us at that time. There were others in the room, but not interested in the case.

Q. Now, will you state what was said by you and what was said by the defendant Kelly on that occasion.

Mr. Thompson: I object to that as hearsay as to all the other defendants and immaterial as to him.

The Court: It may be received as to the defendant Kelly and the objection sustained as to the other defendants.

The Witness: I presented his income tax return for the year 1937 and '38 to him and had him identify them and asked him for records disclosing his activities, and the result should disclose his income tax returns, his net profits.

He said he had no records with him; that he would make a search for further records, but did not believe he had them any longer, as he had destroyed them after preparing his income tax return.

I am quoting the defendant Kelly now when I say he didn't. We later left my office and came over to this building, office 881, Mr. E. Riley Campbell. I was present there also.

Q. What was said over there on that occasion?

Mr. Thompson: I make the same objection, your honor.

The Court: The same ruling.

The Witness: We discussed his income tax returns. And again asked him for records and he again repeated that he

thought he had destroyed all such records as he may 1092 have had after preparing the returns. He thought he possibly may have some at home in a clothes closet. After that I accompanied Mr. Kelly to his home in Oak Park and the only records which might reflect anything on his income tax returns were some social security return copies for the year, or years '38 and part of '39.

Going out in the car he said he may have some adding machine tapes which would disclose his gross income and his expenditures to arrive at the net income he disclosed on his return. He did not find such tapes. He agreed that he would make a search of a safe up at the D and D Club, later telling me he did not find anything up there.

I had occasion to talk to the defendant again after that. He came to my office on January 10th, at which time he brought me some additional copies of Social Security records for the year '37. He didn't bring me anything else. I asked him if it was possible that the man who prepared his returns might have some working papers whereby he might verify the net income of the business as shown by the business schedule on his return. He said that Joe Radmonski prepared his return. I asked him if he would not contact Radmonski and try to find some working papers. He said he would. I asked him if he possibly could not find these records because he was not the actual owner of the place, and he insisted he was the owner. I asked him if he kept a regular set of books. He said no, he kept mostly these adding machine tapes.

I did, in the course of my official duties as revenue agent, have occasion to examine the tax returns of one E. H. Wait. I see him in the courtroom. In the course of the examination of the income tax return of that individual I did have occasion to have a conversation with him. The first one I had was on April 30, 1940, in my office in the Bankers Building. No one else was present.

1093 Q. Will you state what conversation occurred between you and the defendant Wait on that occasion?

Mr. Thompson: We object to that, if the Court please, as hearsay as to all the other defendants, and it is immaterial as to any person; this statement is alleged to have been made after the return of the indictment.

The Court: The objection is sustained as to all the defendants other than E. H. Wait and as to him it is overruled.

The Witness: I had Mr. Wait's income tax returns for

the years '36, '37 and '38. I asked him to identify them as being his returns, which he did. Government's Exhibits, R-82, R-83 and R-84, are the tax returns I handed the defendant Wait on that occasion. He did identify them as his. I did have a conversation with him relative to the contents of these tax reports. The first item we took up was the business schedule, known as Schedule A, in the back of the return. I am talking about the year 1936. I asked him if he had any records to disclose his gross receipts, expenses shown thereon, net income, showing a profit of \$7,628.87. He said he did have records that would disclose that, but he never made \$7,628.87 in the restaurant and beer business at the Lincoln Tavern. That was what that item was that I was talking about. It is so marked, restaurant and beer, and he stated that that business was the Lincoln Tavern at Morton Grove, Illinois. He says that to the best of his recollection he made about a thousand dollars out there in 1936 and that he would bring me records to prove that.

The next item on line 1 on the front of the return, salaries, wages, commissions, and fees, and so forth, he has an item marked, "Various establishments, Chicago and vicinity, \$5100." I did ask him about that. He said that is salary he received in various gambling establishments. I asked him

who paid it to him. He refused to tell me who did. He 1094 said that is what I earned; that is what I put down;

I know what I got." I stated that we were entitled to know who paid that salary. Those persons may claim them as a deduction on their return. He said he would not tell me. I saw the defendant Wait again after that. He came in again on May 6, 1940, at which time he brought me quite a number of records which he claimed reflected his business at the Lincoln Tavern, that is, the restaurant and beer business. I had a conversation with him at that time. I examined those records and he was correct in his statement that he did not make \$7,628.87 at the Lincoln—I asked him if these were all the records and he said yes, and that they would substantiate what he has told me previously. I asked him if the records included any gambling income on any gambling business and he said no, that he only conducted the restaurant and beer at the Lincoln Tavern, that is all that was reflected on those records. I asked him how it was that the records showed no rent paid. He stated that he did not pay rent—that he operated the beer and

restaurant as a convenience to the patrons of the game rooms in the rear operated by James Hartigan.

I asked him if it was possible that James Hartigan paid him a salary.

Mr. Thompson: We object to any statements of Mr. Wait, narration of past events at this late period, it is months after the indictment was returned with respect to James Hartigan. It is hearsay as to James Hartigan and it is hearsay as to all of the defendants.

The Court: My ruling stands. The objection as to the other defendants is sustained. Overruled as to the defendant Wait. The evidence is admissible against Mr. Wait.

The Witness: I don't remember exactly what he said—I couldn't say. I remember the substance. In substance he said he could not answer who paid him. I had a 1095 further conversation with the defendant Wait on that occasion. I asked him if he operated the roulette wheel at the Villa Moderne during the summer of 1936. He said he did. I asked him if any of those profits were disclosed in his return, and he could not identify them—such profits. I asked him if it was true that he actually retained those profits or whether a salary, in effect, was paid for operating the roulette wheels, and he said he didn't get a salary for that, but that he was allowed to retain the profits of that, it was his business.

I at that time discussed the Villa Moderne in connection with the year 1937. That was in the course of this conversation I have just related. I was questioning about all the years. I talked about 1936, '37 and '38. That was in the course of this conversation I have just related.

Q. Do you recall any further conversation that occurred between you on that occasion?

A. I found checks payable to him.

I had occasion to see the defendant Wait at a subsequent time, on May 17. He was in the office again. There was a conversation between us on that occasion.

Q. What did you say to him, and what did he say to you?

Mr. Thompson: Same objection, your Honor please.

The Court: Same ruling.

The Witness: I asked Mr. Wait to explain the number of checks we found clearing payable to him, the maker being one Carl Laemmle. I didn't have the original of those checks at that time. I had some photostats. I did show the photostats to the defendant Wait. The maker of the checks

was Carl Laemmele, drawn on the Hollywood bank. The photostats showed the endorsement on the checks, E. H. Wait. I asked the defendant Wait if those were his signatures, and he said yes. I asked him for what purpose those checks were paid him and he stated that Mr.

Laemmele lost that money in a faro game at the Drake Hotel. Mr. Wait stated that Carl Laemmele and a party of friends wanted to play faro and that he had received a call from a source which he could not identify, to go down to the Drake and deal faro. There were nine checks, eight of them being for \$500 each, and the ninth for \$525, making a total of \$4,525, dated one week apart. I asked Wait whether or not those checks would be reflected on his income tax return, and he said he did not keep the proceeds.

Mr. Hess: Object to that. We are not interested in the investigation of the income tax return of Mr. Wait in this inquiry.

The Court: Overruled.

The Witness: He stated that he did not keep the proceeds of those checks. I asked him where the proceeds went. He said he could not tell me who got the money.

Government's Exhibits O-219, O-220, O-221, O-222, O-223, O-224, O-225, O-226 and O-227, are photostats of the checks that I showed the defendant Wait on that occasion. The signature that appears on the right-hand side, E. H. Wait, is the signature that I said was identified for me by the defendant. I asked him relative to the second endorsement that appears on the back. He said he probably gave those checks to Jack Sommers, since his signature appears on there as the last endorser. Based upon my identifications of signatures on these checks and on the prior income tax returns, I know the signature of the defendant, E. H. Wait. Government's Exhibit R-85 bears the signature of the defendant Wait. It appears first on the line, the proper line for signing it—that is the tax return. It appears on the line where the taxpayer should sign his return. The oath was not administered and a rider or affidavit was attached properly sworn to. That bears the signature E. H. Wait, too. That is the defendant in this case.

Mr. Plunkett: The Government will offer at this time GOVERNMENT'S EXHIBITS O-219 to O-227, inclusive, and GOVERNMENT'S EXHIBITS R-84 and R-85,—one more question before I make that offer.

The Witness: I called Mr. Wait's home on June 4th. I

stated that I had his '39 return, and there was a little information I had, and I would like to have him come in. He said he didn't care to come in because we didn't believe anything he said. I said, "Perhaps you can give me some information over the telephone". I asked him what the amount was of salary on line 1, whether that was salary or other income. He said that the salary was incorrectly reported. He said it didn't represent salary, but his net gain from gambling, of all ventures, principally Villa Moderne that that gain was from. I stated to him that I wanted it because I wanted to correct the income credit which he had failed to take. He didn't say anything further on that occasion.

Mr. Plunkett: The Government will renew the offer heretofore made.

Mr. Hess: Before I ask a question, I move to strike all of the testimony as being immaterial to any of the issues in this case.

The Court: Denied.

Cross-Examination by Mr. Hess.

I have been a revenue agent since 1936. At the end of 1939 I performed duties of investigating and checking up income tax returns of a particular class of persons and '40, when I had these various conversations with Kelly and Wait I was assigned to a squad we know as the fraud squad.

I was checking up gamblers, chiefly bookmakers. I 1098 checked up many returns in the early part of 1940 and the latter part of 1939, in the Chicago territory. I didn't find many of them having any books in the Chicago area.

Most of Mr. Kelly's information regarding his net income was on an adding machine tape, he said. He did not show me any adding machine tape. He did not show me any piece of paper other than the Social Security record I have talked about.

Defendants' Exhibits K-1, K-2 and K-3, were marked for identification.

I did not at that time have before me and under inquiry his 1939 return—just '36, '37 and '38. I didn't see this little slip, Defendants' Exhibit K-1 for identification before—Kelly never showed me that or anything like it. I didn't see defendants' Exhibit K-2 for identification. Kelly did not show me that or anything like it.

I knew at that time that Kelly was a gambler, and I had a pretty good general information as to how gamblers kept a record of their operations. They set up a figure at the end of the month to show what their profits were, by counting their cash. Yes, I have examined gamblers with accurate records. I have found none in the Chicago area. That is the way I found they all did, and that is the way I found Kelly did.

In my same investigation I had some conversation with Mr. Wait—first about his '36 return; later '37, '38 and '39. I had some returns when I was examining Mr. Wait as I did, with the exception of '39. I had examined Mr. Kelly's '39. I didn't examine Wait's for '39 at first. I had a telephone conversation with him along in June of this year about his '39 returns, and he wouldn't come down and talk to me because I wouldn't believe anything he said. He wasn't under indictment at that time for income tax evasion.

1099 Q. You knew he was under indictment for alleged aiding and abetting Mr. Johnson, and it was the purpose of your attempted conversation with him to get evidence to testify in this case?

A. I was assigned Mr. Wait's return to examine.

Q. And you knew he was under indictment?

A. Yes, sir.

Kelly was in my office the last time on June 10th. I spoke to him after that over the telephone. The conversation of June 10th was in my office—that was about his 1936, '37 and '38 income tax. I had before me the 1936 returns, the '37 and the '38. Having those returns before me I knew the auditor who helped him formulate those returns. It was Radomski. I am not sure of '36 from memory, but the '37 return, I will tell you—I now know it was Mr. Brantman. So far as I now remember, he didn't tell me he had seen Mr. Radomski about 1936. Saw Radomski about returns Radomski prepared for him.

Mr. Hess: We object to these returns, your Honor, on the ground that they are immaterial to any issues in this case.

Mr. Thompson: If these checks are offered, we object to them as having no possible bearing on any triable issue in this case; do not prove or tend to prove in any way, the taxable income of the defendant Johnson, nor do they prove, or tend to prove in any way, the charges of aiding

and abetting against any of the other defendants; they are hearsay as to every defendant in this case except, possibly, the defendant Wait.

The Court: You may state, Mr. Witness, whether or not you are acquainted with the signature of the defendant, E. H. Wait.

The Witness: Yes, sir, I am.

The Court: Look at these signatures on these exhibits, O-219 to O-227, and particularly what purports to be the signatures of E. H. Wait on each of those exhibits, 1100 and state whether or not those are, in fact, the signatures of Mr. E. H. Wait.

Mr. Plunkett: These are the two tax returns, Government's Exhibits R-84 and R-85 (handing documents to the court).

The Witness: They are.

The Court: Look at these exhibits, R-84 and R-85, for identification, and particularly at the signatures thereon, purporting to be those of the defendant E. H. Wait, and state whether or not those signatures are, in fact, the signatures of Mr. Wait.

Mr. Thompson: We admit that the witness has already identified these signatures on both of these documents.

The Court: Well, I think he has as to one.

The Witness: These are the signatures.

Mr. Hess: Did you ever see Mr. Wait sign his name?

The Witness: No, sir.

The Court: Did he ever acknowledge his signature?

The Witness: He acknowledged signatures in his income tax return for the years 1936, '37 and '38.

The Court: To you?

The Witness: To me.

The Court: They may be received.

(Whereupon said documents, marked GOVERNMENT'S EXHIBITS O-219 to O-227, inclusive, and R-84 and R-85, were received in evidence.)

(Witness excused.)

NELSON J. GOODSSELL, recalled as a witness on behalf of the Government, having been previously duly sworn, was examined and testified as follows:

Direct Examination (Resumed) by Mr. Hurley.

My name is Nelson J. Goodsell. I was on before, 1101 about a month or so ago—I do not recall the exact date.

I am employed by Horwitz & Horwitz.

I was sworn when I was on the stand before, around August 30th.

I talked with Mr. William R. Johnson with regard to the entry, the second one from the bottom on Government's Exhibit E-47, which is one of the books of the Bon Air Catering Co. That conversation was in the fall of 1939, the latter part of September or the first part of October. I think there is another entry here that I should include in my answer.

Q. Which entry is that?

Mr. Hess: We object to that as to the other defendants except Mr. Johnson, the conversation out of our presence about certain books there. We do not know anything about that.

The Court: Objection overruled. Go ahead.

The Witness: The entry that I asked to refer back to is the second entry above the one in which the question was asked. That entry shows where the stock of the Bon-Air Catering, Incorporated, was set up on the books of that company to reflect the stock records, and shows the distribution of the stock to the stockholders in the entry. That entry shows the distribution of 100 shares of stock at a value of \$10,000.00, par 100; 54 shares to Mr. Johnson; 25 shares to Mr. Wait; 20 shares to Mr. Hartigan; and one share to Mr. Deshinger. At the time I talked to Mr. Johnson I knew of this distribution of stock. I had not been able to find where the money in payment of these amounts of stock had been paid in, so I asked Mr. Johnson for details in regard to that, and he said he had not explained why, but told me he charged the entire amount of ten thousand dollars to his account. The entry you asked me about first is the entry in which I did that. The ten

thousand dollar amount was shown charged to Mr. 1102 Johnson instead of that amount being charged to those individuals. That entry was made by me in pursuance of instructions from Johnson.

Cross-Examination by Mr. Thompson.

I am connected with Horwitz & Horwitz. They made an audit of the books of the Bon-Air Catering Company at the close of the 1938 season. That is the first the auditing firm had to do with the books of the catering company. My recollection is that prior to that they had their own bookkeeper. The corporation employed us to audit its books. I have no knowledge of the making of the contract, arranging for that employment. Horwath & Horwath are a national accounting firm, specializing in accounting for restaurants and hotels, etc. Mr. Johnson had all the charges with respect to construction work taken off as charges against the Bon Air Catering Company.

Q. And some charges were on the books, the moneys which appeared from the books to have been advanced by Mr. Geary, was there not?

A. Yes, sir.

Q. And he said that no money had been advanced by Mr. Geary, for which he had not been reimbursed, is that true?

A. Yes, sir.

After we were employed to do the auditing for the Bon Air Country Club we kept a man out there on the job continuously during the 1939 season. That gentleman's name was Mr. Clarence Black. He was our employee. He worked continuously on the Bon Air Catering Com- 1103 pany books right at their office. He was not there during the 1940 season.

At the close of the '39 season we made an audit of the books and a report.

DAVID A. SLOAN, being duly sworn, testified as follows:

Direct Examination by Mr. E. Riley Campbell.

I am a special agent, in the Intelligence Unit—I am also a deputy collector of internal revenue and a deputy United States Marshal, since July, 1939. I have been one continuously ever since. I have been a special agent in the revenue service since 1934.

Q. In the course of your official duties did you try to locate one Joseph J. Conroy?

Mr. Thompson: We object to this as a conclusion of the witness. There's no way for us to test the witness on cross examination.

The Court: Overruled.

A. I did.

Q. What, if anything, did you do in trying to locate Mr. Conroy?

Mr. Thompson: We object to this as immaterial. Mr. Conroy is not a defendant here, and no connection with us in any way as shown by any evidence in this record.

The Court: Overruled.

A. On Wednesday, July 17, 1940, I went to Sunny Acres and interviewed the manager of the farm, Mr. Wilson, and inquired.

Mr. Thompson: Just a moment. We object to any hearsay testimony of this witness on this subject, which we—

1104 The Court: He has not started any hearsay yet. He said he inquired. What did he inquire?

The Witness: I inquired from Mr. Wilson as to the whereabouts of Mr. Conroy and he told me that—

Mr. Thompson: We object to the answer previously given and move to strike it.

The Court: Let it stand.

Mr. Thompson: On the ground it contains an inference that Mr. Wilson, or Mr. Johason, the proprietor of the farm, had knowledge of Mr. Conroy's whereabouts or some connection therewith.

The Court: Overruled.

Q. What particular place at the Sunny Acres stock farm did you go to, Mr. Sloan?

Mr. Thompson: We object to that.

The Court: Overruled.

The Witness: I first went to the main farm. Went down to the barn, went down to the shed to some man there, and I inquired from some man there as to where I would find Mr. Wilson, and he told me. I do not know of any office at the Sunny Acres stock farm. On Friday, July 19, 1940, I called at Mr. Conroy's resident, 550 West Roscoe Street, Chicago, and on each occasion I was unable to find anyone at home, no answer. Then, on Tuesday, July 28th, I passed this place in the vicinity several times, looking for a car that had been described to me as belonging to Mr. Conroy. That is all I did.

I did try to locate one John W. Geary.

Mr. Thompson: If the Court please, we can't see any possible materiality in this which contains the obvious prejudicial inference that we have knowledge of the whereabouts of these men, or that they have some connection with us or that we have some responsibility for the failure 1105 of these agents to find somebody.

The Court: Overruled.

The Witness: On August 9, 1940, I called at the Bon-Air Country Club, where I was informed that he was employed. I inquired for Mr. Wait, the manager.

Mr. Thompson: We object to the assumption that Mr. Wait is the manager.

The Court: Strike out the Manager.

The Witness: Inquired for Mr. Wait about where I could locate Mr. Geary. He told me he wasn't there. He did not know where I could find him.

I called twice at his residence, 836 North Springfield Avenue. The first time I called I was unable to find anyone at all. The second time I called I talked with his mother and she told me.

Mr. Thompson: We object to the assumption that the address he gave is the residence of Mr. Geary.

The Court: Overruled.

The Witness: That is all I did in trying to locate Mr. Geary.

Examination by the Court.

I didn't find him. I didn't find the other men.

E. Riley Campbell continues the Examination.

In the course of my official duties I did try to locate one Roy Love.

Q. Tell us what you did in trying to locate Mr. Love.

Mr. Thompson: We make the same objection, your Honor.

The Court: Overruled.

The Witness: I went to Wheeling, Illinois, at the cross-roads in the main part of town and watched for him to pass that point. I was there from in the morning until late in the afternoon. That was on August 8, 1940. 1106 Upon the conclusion of this watching at Wheeling I drove on to the Bon-Air Country Club to see if the car—I checked over the cars that were parked there, trying to locate his car. I didn't do anything else at that time. On August 13th I went to his home at 1642 West 69th Street, in Chicago.

Mr. Thompson: We object to the assumption that that is his home.

The Court: Overruled.

The Witness: I talked with his mother who lives at this address.

Mr. Thompson: We object to the assumption that the lady with whom he talked was this man's mother, or that she lived at this address.

The Court: Overruled.

The Witness: I talked to this woman here at this address, who said she was his mother.

Mr. Thompson: We object to that as hearsay and move to strike it out.

The Court: Strike it out.

The Witness: I did talk with some one.

Mr. Thompson: We move to strike that answer and the one previous.

The Court: Let it stand. I assume he had a mother.

The Witness: I went to 6943 North Glenwood Avenue to talk with his brother.

Mr. Thompson: I object to that assumption that that is the address of his brother.

The Witness: The first time I went, I rang the bell, and no response. I was unable to find anyone at home. I went back the next day. I talked with Mrs. Love.

Mr. Thompson: We object to the assumption.

1107 The Witness: With the woman who said she was Mrs. Love.

Mr. Thompson: That the person with whom he talked was Mrs. Love.

The Court: I think I will let it stand.

The Witness: I didn't do anything else to try to locate Mr. Love—I didn't find him.

In the course of my work I did try to locate one Bernard McGrath.

Q. Tell us what you did in that respect, please?

Mr. Thompson: We object to the testimony on the same ground.

The Court: Overruled.

The Witness: On August 5, 1940, I went to 1307 South Kildare Avenue. I rang the bell. I didn't get any response. The same day I went to the Post Office of that district and inquired if there was any forwarding address. Following that I went to the Police Station.

Mr. Thompson: We object to the fact he went to the police station to try to locate Mr. McGrath.

The Court: Overruled.

The Witness: I talked with the officer in charge of the police station. I did not attempt to find him at the Police Station. I did make another attempt to locate Mr. McGrath. I went to the 13 Club, at 13 South Cicero Avenue. This was all during 1940. I didn't find Mr. McGrath there.

I did try to locate one Frank Vase.

Q. Tell us what you did in that respect.

Mr. Thompson: We object to that as immaterial to any issue in this case.

The Court: Overruled.

Mr. Thompson: As carrying the inference we had something to do with the failure.

The Witness: I talked to the Postmaster in the 1108 district in which he resided.

Mr. Thompson: We object to the assumption that the Postmaster with whom he talked lived in the district in which Mr. Vase resides.

The Court: Overruled.

The Witness: That was on August 9, 1940. That is all I did to try to locate Mr. Vase. I did not find him.

I did not find any of these men I looked for.

Mr. Thompson: I move to strike all the testimony of the witness as immaterial to any issue in this case.

The Court: Let it stand.

Mr. Thompson: Hearsay as to these defendants.

The Court: Let it stand.

Mr. Hurley: At this time, if the Court please, we wish to offer in evidence the map which is marked O-1 as an exhibit.

Mr. Thompson: We have no objection on the usual tech-

nical grounds, but we do object that it is immaterial to any issue in this case.

The Court: Overruled. It may be received in this case.

(Which said document so offered and received in evidence was marked GOVERNMENT'S EXHIBIT O-1.)

The Government here rested its case.

Presented Dec. 19, 1940.

John P. Barnes,
Judge.

1109

MOTIONS OF DEFENDANTS.

Thereupon defendant William R. Johnson, at the close of the evidence for the prosecution, filed its motion asking the Court to instruct the jury to find him not guilty as to each count of the indictment, and the defendants, Jack Sommers, James H. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown, filed their motions severally asking the Court to instruct the jury to find them respectively not guilty under each count of the indictment, and the Court having heard arguments of attorneys, denied said motions, to which order of denial the several defendants excepted.

Thereupon the defendants each severally renewed their motions to strike certain evidence received and made motions specifically to strike the testimony of the witness Schumacker that defendant Johnson discharged him from employment in 1930, the testimony of the witness Brantman as to his conversations with the several defendants in the matter of preparation and filing of their income tax returns, the testimony of the witness Goldstein respecting a controversy between him and defendant Creighton relating to the payment of rent for Club Western, the grand jury testimony of defendant Brown that he had destroyed certain records of the Lawrence Avenue Currency Exchange and that two money orders issued were purchased by defendant Johnson, and all other testimony which was received as to particular defendants subject to being connected up by the prosecution, and the Court overruled all such motions, and the defendants severally excepted to such ruling.

Thereupon the defendants each severally moved that the Court require the prosecution to elect whether it would proceed upon the first four counts of the indictment, 1110 or upon the fifth count of the indictment, and the

Court, after hearing arguments of counsel, overruled said motion, and the defendants severally excepted to the ruling.

Thereupon the Court ruled that its denial of the motions for a directed verdict under the fifth count was equivalent to a finding that there was substantial evidence of the existence of a conspiracy, and therefore that all evidence which had been received dependent upon the proof of a conspiracy being established, will now be received generally, to which ruling each of the defendants excepted.

1111

EVIDENCE OF DEFENDANTS.

And thereupon the defendants, to maintain the issues on their part, introduced the following evidence:

FLORENCE CHALMERS, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 1837 Patterson Avenue, Chicago. I am in the real estate business and I am manager of Albany Park Building on Kedzie Avenue between Leland and Lawrence. Mr. Jack Sommers is a tenant in that building. When I took over the building in 1933 Mr. Thomas Barnes was the tenant on the second floor at 4721 North Kedzie Avenue. He continued there until October 1934 when he died. After Mr. Barnes' death Mr. Sommers took over the space at \$200 a month. He has paid that rent continuously since December 1934. This is shown by my reports to the receiver of the building which are defendants' Exhibits S-1(a), (b), etc. During his tenancy Mr. Sommers has sometimes been behind in his payments but he has always paid his rent until recently. There was an adjustment early in 1936 when Mr. Sommers got five months behind. I gave him credit for the \$600 which Mr. Barnes had deposited as rent security. Later Mr. Sommers took over the first floor store at 4721 where he operated a restaurant. It was understood at the time of the original agreement that he was to have this store without additional rent. In 1938 he took over another store at 4715 North Kedzie for which he paid \$45 a month. When he put in a refrigerator plant in the res-

taurant and increased the water consumption he paid an additional \$7.50 a month for water. The second floor space occupied by Mr. Sommers was over six stores on the 1112 first floor. The building at 4701 North Kedzie is not a part of this building. Government's Exhibit O-5 is a picture of the Albany Park Building I manage. The only front entrance to the second floor is 4721 North Kedzie. There is also a rear entrance.

Cross-Examination by Mr. Hurley.

Mr. Sommers used the second floor as a gambling house. It was closed a great deal of the time but the rent was paid. Mr. Sommers sometimes sent the rent by a boy and sometimes I collected it from him personally. There was no written lease covering the premises. Both Mr. Barnes and Mr. Sommers paid on a month to month basis. The rent was always paid in cash. Mr. Sommers now owes me three months rent but he has not given up the space. Mr. Sommers decorated the space rented by him but I do not know who did the work. The space at 4715 was used as a store room and carpenter shop. Mr. Sommers paid rent for this space. There were chairs and lumber and other things in there. The front windows in this store were painted white on the inside. Roy Love is a tenant in this property. He rents a garage in the rear. He is now a year behind in his rent. The rent for the restaurant at 4721 and the second floor space was \$200, and the rent for 4715 was \$45. All the tenants furnished their own heat. The second floor space is about 100 feet along Kedzie and 60 feet deep.

Redirect Examination by Mr. Thompson.

Defendants' Exhibits S-2(a), (b), etc. are rent receipts which I gave Mr. Sommers for the periods represented on them.

1113 Mr. Thompson: We offer in evidence DEFENDANTS' EXHIBITS S-1(a) (b), etc. as to the items referring to 4715 and to 4721 North Kedzie, first and second floors, and also DEFENDANTS' EXHIBITS S-2(a), (b), etc.

Mr. Hurley: No objection.

The Court: They may be received.

JOHN ENGSTLER, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 6444 Drake Avenue, Lincolnwood, Illinois. I own the real estate on which is located the Dev-Lin Club. Prior to 1935 I operated on the property a dance hall, tavern and picnic grove. About the first of May 1935 I leased the property to defendant, Edward Wait. Defendants' Exhibit S-3 is the lease I made with Mr. Wait. He occupied the property for one year. He built a brick addition to the building on the property. Government's Exhibit O-19 and O-19(a) are photographs of the Dev-Lin Club after Mr. Wait made the improvements. Defendant Jack Sommers succeeded Mr. Wait as my tenant on May 1, 1936. Mr. Sommers paid me \$250 a month for the property and I gave him receipts which are defendants' Exhibits S-4(a), (b), etc. Mr. Sommers made some improvements in the property. He made some alterations in the building for better ventilation and he built a fence.

Cross-Examination by Mr. Plunkett.

In 1938 I tended bar for Mr. Sommers at the Dev-Lin Club. Prior to that I parked cars for Mr. Sommers in 1937.

I worked about four weeks for Mr. Wait parking cars. 1114 Mr. Wait built the brick addition to the building. I live in the house right next to the Dev-Lin Club. A new heating plant was put in the building. I know Mr. Schultz who lives across the street. He worked about the Dev-Lin Club when it was being fixed up. Roy Love moved a little real estate office off the property. He also cut up an old boiler which was lying in the alley. When the Wait lease expired I did not make a new lease with Sommers. He paid me from month to month. He is not paying me rent now. When Mr. Sommers took over the place Mr. Wait told me he was going out of business and that he had got me a good tenant. Mr. Sommers was my boss when I was bar tender at the Dev-Lin. He paid me \$5 in cash every night. A girl named Lillian was in charge of the bar. I don't know her second name. I think she was the one who worked at the Horse Shoe restaurant. She always paid me. When I first worked there Mr. Wait was my boss. I did not

see Mr. Sommers around there until the spring of 1936. I did not pay any of the cost of new construction or other charges on the property. Gambling was operated in the new room. I never worked at the Horse Show restaurant but I have been there to collect my rent from Mr. Sommers.

Mr. Thompson: We offer in evidence DEFENDANTS' EXHIBIT S-3.

Mr. Plunkett: No objection.

The Court: It may be received.

CHARLES KIMMEL, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 3425 Foster Avenue. I was employed by Mr. Jack Sommers as bookkeeper. I graduated from Lane Technical High School in 1919 and I have had two 1115 and one-half years of accounting at De Paul University. After I finished school I worked as bookkeeper and cashier for a commission house on Randolph Street for six years. While in school I played the violin and later I formed my own band and played professionally for about three and a half years. I went to work for Mr. Sommers in the fall of 1936. Prior to that time I had never been employed in a gambling house. I had been unemployed for seven or eight months and I was selling Christmas cards which I had drawn by hand. I went to the gambling house to get some orders. Mr. Sommers was impressed by my work and asked whether I could letter some signs for him. Later I did this work for him and then he offered me a job and I took it. I started to work as a shill at the Horse Shoe, 4721 North Kedzie Avenue. No one had anything to do with my employment except Mr. Sommers. He fixed my wages and hours and duties. Later I dealt Red and Black. Mrs. Rebman played that game. The limit was five and ten; that is, you could bet up to \$5 on any suit and up to \$10 on red or black. Mr. Sommers fixed the limit of the game. Mrs. Rebman wanted the limit changed and I told her she would have to see Mr. Sommers. Mr. Sommers came over and told me that Mrs. Rebman could bet as high as \$20 on red or black provided she put a dollar on the first card. As to other players the five and ten limit remained. Mrs.

Rebman played along for a while under the new limit and then she brought someone with her to play for her in order to beat the limit of the game. About December 1, 1936, Mr. Sommers asked me to take charge of his Social Security records. I worked out a system for a daily payroll and had forms printed. Defendant's Exhibit S-5 is one sheet of the large book. The figure in pen and ink in each square on the page represents a day's pay. It 1116 shows in cents how much the employee paid. A page was made for every employee. Defendant's Exhibit S-6 is the page of Earl Courtney. It represents for an employee in 1936 what S-5 represents for an employee in 1937. Defendants' Exhibit S-8 is what I call a key sheet. It shows the time we were at the Horse Shoe and the time we were at the Dev-Lin and the totals at the end of each month for the entire payroll. Defendants' Exhibit S-9 is the amount of the payroll every day for the year 1939. I prepared this sheet and I know the entries are true. The total amount of the payroll tax of Mr. Sommers in 1939 was approximately \$29,000. Each Social Security sheet shows one per cent of the wages paid that employee. The figure \$426.37 at the top of the column on the right-hand side is one per cent of the payroll for the month of January 1939. This means that the payroll was \$42,637 for the month for those paying the tax. The red figures are for men over sixty-five years who did not pay the tax. The total payroll was approximately \$45,000. In February 1939 Mr. Sommers paid his employees who paid the tax \$39,000 and in March \$44,840. Mr. Sommers paid the Federal Government \$2,100 for the first quarter of the year 1939. As I collected the Social Security tax from the employees I deposited it in the bank. At the end of the quarter checks were drawn to cover the tax. The tax for the first quarter of 1939 was \$6,359.95, for the second quarter \$6,142.75, for the third quarter \$7,224.03, and for the fourth quarter \$28.05. At the end of 1939 an excise tax of \$1,204.02 was paid. Defendants' Exhibit S-9 is a total of the individual sheets for 1939 and also indicates when and where Mr. Sommers was operating for the different periods. It shows that the Horse Shoe at 4721 North Kedzie was operating from January 1 to June 1, 1939, and that Mr. Sommers moved to the Dev-Lin Club on June 2 and continued there until September 25, 1939. Defendants' Exhibit

S-8 shows the same things for 1938. It shows that the 1117 Horse Shoe operated from February 9 to March 18, 1938, the Dev-Lin from March 19 to April 18, the Horse Shoe from April 19 to May 24, and the Dev-Lin from May 24 to August 14, 1938. This exhibit shows that the payroll for February, 1938, was about \$11,000, for March \$14,000, for April \$19,000, for May \$24,000, for June \$24,000, for July \$25,000, and for August \$16,000. Defendants' Exhibit S-10 is a return to the Collector of Internal Revenue and the Department of Labor for the quarter ending March 31, 1939. It is signed by Mr. Jack Sommers, owner, on April 12, 1939, and the check for \$3,595.49 is signed by Jack Sommers and drawn on the Northern Trust Company. There is attached to the return sheet signed by Mr. Sommers a list of all the employees. A similar report and check was filed each quarter. I prepared the reports and filed them. Mr. McLaughlin, whose handwriting appears on Defendants' Exhibit S-6, took care of the Social Security records on the night shift for a certain period. I took over the day and night shifts in January, 1939. Originally my hours were from 1 to 8 p. m. The night shift came on at 8 o'clock. Mr. Sommers asked me to come down at 2 o'clock and work until 9 so that I would be able to take care of both payrolls. I kept Mr. Sommers' books in the restaurant. Since 1932 I have been connected with golf tournaments. I have been the official scorer for nearly every major golf tournament in the United States. During the periods of these tournaments Mr. Sommers gave me leave of absence, if he was operating at that time. About June, 1937, I worked for Mr. Sommers at the Lincoln Tavern for about a week or ten days. Mr. Sommers was then operating the Lincoln Tavern and no one else was in business there at that time. I performed the same services at the Lincoln Tavern I did at the Horse Shoe and the Dev-Lin. The employees were carried on the Horse Shoe payroll.

1118

Cross-Examination by Mr. Hurley.

I worked at Harlem Stables a short time in 1938. I gave out the payroll there in small manila envelopes about six inches long and four inches wide. The employees were paid in currency every day at the end of each shift. The shills got \$4 a day, the floor men \$15, the box

men from \$12 to \$15, and the dealers from \$7 to \$10 a day. Men who drove their own cars and hauled customers got \$7 a day. Cashiers got from \$8 to \$10 a day. All employees were paid in currency. In the bookie, sheet writers got from \$5 to \$7 a day. Porters were paid \$17 a week. I never heard of a service man in the bookie. There was no Keno where I was employed which ran during the hours I worked. The door men were paid from \$7 to \$10 a day. It was the duty of the cashiers to change money and to pay off the winners. The floor man or the box man would write a slip stating the amount a patron had won and the cashier would give him the cash. I never worked in a book. There was a broadcasting set at the Horse Shoe.

Mr. Thompson: We object to all this as improper cross-examination.

The Court: I don't think it is all improper cross-examination. I think the last question may be improper.

I did not keep any books and records of the receipts taken in at the Horse Shoe nor at the Dev-Lin. There was no other bookkeeper in these gambling houses. I don't know what became of the sheets that were written by the sheet writers in the book nor what became of the sheets kept by the cashier. I kept no record of what came out of the slot machines. I never saw anyone take money out of them. I don't know Barney McGrath. I have seen him once or twice around the Horse Shoe. I know Conrad McGrath. I have seen him at the Horse Shoe but he did not work there except as a cashier for a short time 1119 early in 1937. John Geary, otherwise known as Bud, worked at the Horse Shoe for a while. I would say he was a sheet writer two or three months in 1937. I haven't seen him for a couple of years. I know Ray Love. He did repair work at the Horse Shoe off and on. He might be there two or three hours and then again I would not see him for weeks. It covered the entire period from 1936 to 1939. I should say we had about seventy-five employees for the short period we were at the Lincoln Tavern. These employees were paid in currency every day. Mr. Sommers was the boss and Mr. Claude Sullivan was the floor man in the daytime and Mr. William Barre at night. I was only on duty about an hour at night and cannot say whether there were others in charge under Sommers at night. I know Al and Frank Kalus. They

both worked at the Horse Shoe. Frank was a cashier on the side games and Al walked around like one of the floor men. A floor man acts as an overseer. If a game gets crowded he opens another table. I haven't seen either of these men for months. I did not put the money in the pay envelopes. Mr. Sommers gave them to me with the money in them. Defendants' Exhibit S-9 is in my handwriting. I made the entries on there at the end of each month. Bartels was a box man at the Horse Shoe back in 1937 or 1938 and perhaps in 1939. Oglesby was a box man who worked at the Horse Shoe all the time I was there. I prepared and filed the Social Security returns for the Horse Shoe. The returns from the Dev-Lin were filed under the name of the Horse Shoe. Milton Sommers is a brother of Jack Sommers. He was a box man at the Horse Shoe. Government's Exhibit S-1 was prepared by me. S-2 was probably prepared by Mr. McLaughlin. It is written on a typewriter. I cannot tell you who prepared S-3 without seeing the original. These are just duplicates.

Q. As to Government's Exhibits S-4 and S-5—?

1120 Mr. Thompson: We object to all of this as improper cross-examination.

The Court: What do these purport to be?

Mr. Hurley: Social Security returns.

The Court: Overruled.

I cannot tell as to these or as to S-6 or S-7. They show nothing but typewriting and I cannot tell by that. Sometimes I used a typewriter. No one but Mr. McLaughlin and I worked on these records. Mr. McLaughlin worked on the books from February 24 to August 24, 1938, and again from December 2, 1938, to January 22, 1939. I am referring to the Social Security books. Everything in these books was put there by me except what Mr. McLaughlin put there. They were kept for Mr. Sommers under one employer's number. The records for the Horse Shoe, the Dev-Lin and the Lincoln Tavern were kept under one employer's number. Sullivan and Barre were in charge under Sommers at the Lincoln Tavern. They were in charge under him all through 1937, 1938 and 1939. I worked in an office in the center of the gambling quarters which was similar to a paying teller's cage at a bank. The cashiers in the book had little booths at the side of the room. The cashiers for the side games worked in

little raised booths. I used a little portable typewriter to prepare Defendants' Exhibit S-10. Mr. Sommers' sister typed some of these reports. When we needed her help we called her and she brought her portable typewriter. I do not know the make. I used the typewriter down in the restaurant. I think it was an Oliver. I spent a little time at the end of each month on the restaurant books. I prepared no Social Security returns for any gambling house except those operated by Mr. Sommers. I do not know of Earl Jackson being employed at the Horse Shoe. Peter Montague was a box man there for about two years.

I do not know Peter Riley. He is on the Social 1121 Security records. He worked on the night shift and Mr. McLaughlin gave him his pay. He worked from February 15 to August 25, 1938, and from December 2, 1938, to January 6, 1939, and then for three days in June, 1939. He was paid \$10 a day but I do not know what kind of work he was doing.

Q. What employees of this gambling house were getting \$10?

Mr. Thompson: We object to that. The witness has already said he does not know what Mr. Riley did.

Mr. Hurley: He knows what all these men were paid.

The Court: Overruled.

There were several different types of employees who were getting \$10 a day. There were dealers of different kinds and cashiers. I knew an employee named Joseph Sperling. He was one of the door men. He worked there from June 11 to August 31, 1937, and from May 3 to May 16, 1938. I don't know a man named Frank Vasicek who worked at the Horse Shoe. The records in Mr. McLaughlin's handwriting show that he was on the night shift from August 6 to August 25, 1938, and from December 4, to December 12, 1938. He got \$15 a day but I do not know what he did. Floor men and box men got that amount. I never knew this man as Frank Vase. I did not know Frank Villum as an employee of the Horse Shoe. The records show he worked at night from June 1 to July 6, 1938, and got \$15 a day. I imagine he was a box man. I knew James Gleason as an employee at the Horse Shoe. He was a cashier from January 1 to June 14, 1937, and from May 25 to July 30, 1938. I do not know that he worked anywhere else. I dealt Red and Black for about ten days at Harlem Stables.

1122 *Redirect Examination by Mr. Thompson.*

Mr. Hartigan employed me at Harlem Stables. When the Horse Shoe closed I asked Mr. Sommers whether he thought I could get work out there and he sent me to Mr. Hartigan. This was some time in 1938. When I was preparing to file Social Security returns I talked with someone at the Federal Building about whether I should file a separate return for the Horse Shoe and the Dev-Lin. They told me that one employer's number was sufficient.

Mr. Thompson: I offer in evidence Defendants' Exhibits S-5, S-6, S-7, S-8, S-9 and S-10(a), (b), etc.

The Court: They may be received.

BERNARD KOCH, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 6337 North Kenmore. I have been employed by Mr. Jack Sommers since about 1935. I began employment as a shill and later became a dealer in a dice game. You entered the Horse Shoe gambling room through the middle of the north wall. Down the west wall were the Red and Black game and the poker games. At the south end was the horse book. Down the center of the room were the crap games. The wall sheets for the horsebook were on the south wall and at the south end of the east wall were the sheet writers and the cashiers for the book. The cashiers' cages looked like bank cages. Near the north wall on the west side of the door were money changers' cages and in the northwest corner was a vault. To the left of the entrance or east side of the room there were wash rooms and check rooms. The first table immediately in front of the door was a crap table for 1123 the money game and the second was the same. Beyond that there was sometimes another money game and then there were usually two or three check games. Four men work at a dice table, a box man and a dealer on each side of him at one side of the table, and a stick man on the other side. The dice table was about twelve feet long and had on it a regular crap lay-out. This is a long green cloth having on it a "Do Pass" line, a

"Don't Pass" line, a number space, different numbers and different propositions. The layout is double, each end of the table being the same. At the money tables we dealt with dollar checks and paper currency. When a player used checks and decided to cash out, the box man would call out the amount and a runner would bring the money from the money changer. We used 5's and 20's at the tables and sometimes 100's. One hundred dollar bills were used to pay out where the player won more than \$100. If a player won \$1,000 he would usually be paid nine \$100 bills and three or four 20's and the rest in 5's and singles. If the player finished playing with a large number of 5's we would ask him to turn in his 5's and take 100's because we needed the 5's for working money. For efficient dealing the working money needed to be practically new. When we got new packages of dealing money we usually cut it in with the money we had been using so that it would make it easier to deal. We would take one new bill, then one used bill, then another new bill, and then a used bill, and so on. Bets were settled at the end of each play. When a player quit winner he sold us the checks he had. The box man would call out the amount and write a slip, a runner would take that slip to the money changer and get the player his money. Jack Sommers hired me and paid me and fixed my hours of work and my duties. He fixed the limit on the crap game, settled all disputes, okayed the credit of patrons, and performed all other services of supervision. No one else performed these services when Mr. Sommers was present. If

1124 he was not present, then the floor man appointed by

Mr. Sommers performed these services. I have seen defendant Wait but I never worked for him. I have seen defendant Creighton but I never worked for him. I have seen defendant Flanagan but I never worked for him. I have seen defendant Hartigan and I worked for him for a while at the Harlem Stables when Mr. Sommers' places were closed. I went there to look for a job and Mr. Hartigan hired me. He fixed my pay and my hours and my duties. When Mr. Sommers' places were open I worked for him. The gambling room at the Dev-Lin Club faced south. Almost directly in front of the door were the crap tables. To the right were the money changers' stand and down the right wall the black jack game and the roulette wheels. The horse book was at the north end of the room.

Jack Sommers was in charge of the Dev-Lin Club and performed duties there similar to those performed by him at the Horse Shoe. I worked for Mr. Sommers at the Lincoln Tavern for probably a week at two different times, one late in 1936 and the other in the summer of 1937. Our other places were closed. Mr. Sommers was in charge and there was no one else in authority at the Lincoln Tavern while we were there. I do not know defendant Mackay. I know defendant Kelly and I worked for him for a while at the D. & D. Club. He hired me and paid me and fixed my hours and duties. Mr. Kelly had full charge of the D. & D. Club. I worked for him only two or three nights. I do not know defendant Brown. I have known defendant Johnson ever since I worked for Mr. Sommers. He came often to the Horse Shoe. He might be there two or three times in one week and might not show up again for a month. He would come in and look around and talk to Mr. Sommers. If there was a big game on, one above the \$100 limit of the Horse Shoe, Mr. Johnson would take over the table. Mr. Sommers would tell the box man to check the table and Mr. Johnson would take over the game. While Mr. Johnson was at the table, 1125 if there were any cash-outs, he paid them out of his pocket or out of a box. There was no limit when Mr. Johnson was in charge of the table. When the game was over we would move to another money table and I don't know what else was done. Mr. Johnson had nothing to do with my employment at the Horse Shoe Club. I have never seen him do anything there except stand around and visit or bank a game where there was heavy play. He visited the Dev-Lin Club when we were out there, sometimes two or three times a week, and then again maybe not for a week or two. When there was a big game he would take over the game. I don't remember seeing him at the Lincoln Tavern during the two short periods we were there, nor do I remember seeing him at the D. & D. Club during the few days I was there. I saw Mr. Johnson at Harlem Stables and I have seen him take over a few games out there. When Mr. Johnson took over a dice table he furnished the bank roll. The working money and the checks and \$5 bills were checked to Mr. Johnson by Mr. Hartigan and these were left on the table for working tools. I never saw anyone come in to a gambling house with Mr. Johnson nor did I ever see anyone traveling with him nor did I ever see anyone go out with him.

Cross-Examination by Mr. Plunkett.

I never saw any other person take over a game in these gambling houses except Mr. Johnson. I cannot name any of the players who were betting too high for the house to take the bets. If the bets were more than \$100 on a roll of the dice, it was beyond the house limit. When a player wanted to bet beyond the limit he notified Mr. Sommers and I don't know what arrangements he made about sending for Mr. Johnson. Mr. Johnson did not roll the dice himself. He acted as box man or dealt the game. He had a large bank roll which he took out of his pocket. If a player won he paid him right there. He carried his money in his trousers pocket in a large roll of 5's, 10's, 20's and 100's. I don't know how thick the roll was nor do I remember how many pockets he took it from. He dealt this money at the table if he was dealing. He dealt only to the men who were betting against him,—the man that was playing the high amounts. The other dealer at the table dealt to the other persons. When he was not dealing he sat down at the box. When Johnson took over the table it was his money on the table. He took over the entire game whether the bets were \$1 or \$100. When he sat at the box he just watched the game. The dealers dealt the game. When there was cashing out he took the money out of the box or out of his pocket. The money in the box was his. As the players lost, their money was put into the box and when they won he paid them. If the money in the box ran out and he needed more money he took it out of his pocket. All of the money on the table when he took over the game was his. When there was a high player he would deal directly to him and pay him off directly. The regular dealers dealt to the other players. These high rolling games lasted until they broke up. Sometimes they lasted an hour, an hour and a half, two hours, sometimes thirty minutes. I cannot give you any particular time of one of these games. I cannot say whether it was a year ago or five years ago. I cannot single out any one game. I know it happened on numerous occasions. I do not remember when the last game happened.

1127 JOHN LEO, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 2319 South Whipple Street. I have lived in Chicago all my life. I have worked for Jack Sommers at the Horse Shoe and at the Dev-Lin. I started in 1935 dealing a crap game. I dealt the money game. A player puts his money on the lay-out according to his bet and I cover it. If they win I pay them off at the end of the play. If they lose I take the money. There are four dealers at a crap game. Three work at one time, two dealing and one on the stick. The box man sits between the dealers. He supervises the game. One dealer cannot cover a whole table. It is about the size of a billiard table. One works at each end. The stock man stands opposite the box man. He calls the dice and then rakes the dice back to the player. The dealers use chips and five and twenty dollar bills for dealing. The chips are for those who play under \$5. The 5's and the 20's are for those who bet those amounts or more. The working money must be nearly new money. Old money is too soft to deal. In high games \$100 bills are used for dealing. One hundred dollar bills are used to pay winners who have won more than \$100. When winners have 5's and 20's we ask them to take big money so that we will not run out of working money. Jack Sommers hired and fired employees at the Horse Shoe, settled disputes and gave orders generally. He fixed the limits of the games. The standing limit on the crap game was \$100. The limit of a bet on one roll of the dice was \$100. Mr. Sommers okayed the credit of patrons and assigned the employees to their duties. When Mr. Sommers was away he designated the floor man who was to be in charge. If both Mr. Sommers and the floor man were out, he left the senior box man, Mr. Greenberg in charge in the day-1128 time. At night the man under Mr. Sommers was Mr. Barre. I have heard of defendant Creighton but do not know him and never worked for him. I have not seen defendant Wait and never worked for him. I worked a couple of nights for defendant Kelly at the D. & D. Club. I have heard of defendant Mackay but never worked for him. I have heard of defendant Flanagan but never worked for him. I worked for defendant

Hartigan a few times at Harlem Stables. I have known defendant Johnson for seven or eight years. He frequently came into the Horse Shoe. Sometimes he would come two or three times a week and then he wouldn't come for three weeks or a month. He sometimes gambled in the Horse Shoe when there was a game over the house limit. There was no limit when Mr. Johnson took over the game. He would sometimes act as box man and sometimes would deal the game himself. When the game was high Mr. Sommers would check the table to Mr. Johnson and Mr. Johnson would take over the table. When there is a \$100 limit it applies to each player and \$1200 or \$1400 could be involved in such a game on a single roll of the dice. Fourteen or fifteen people can play at a dice table. Mr. Sommers' position at the Dev-Lin was the same as his position at the Horse Shoe. Mr. Johnson would take over high games at the Dev-Lin. Mr. Sommers would check the table to him and Mr. Johnson would take over the table and furnish the bank roll. I worked for Mr. Sommers a week or two around the middle of 1937 at the Lincoln Tavern. I saw Mr. Johnson there once or twice and I think I saw him play out there once.

Cross-Examination by Mr. Hurley.

When I first got out of school I worked for a while in a plumbing supply house. In gambling houses I have always worked as a dealer. I learned to deal craps 1129 about fifteen years ago on Clark Street. I started to work at the Horse Shoe I think at the end of 1934. That was on the second floor on Kedzie near Lawrence. Sommers was the boss there and I don't know that anybody was hiring Sommers as boss. I worked sometimes days and sometimes nights. Sommers used to switch us around. Sometimes we were closed. When we were not closed I worked sometimes days and sometimes nights. I would say forty per cent. days and sixty per cent. nights. It was the same during all of the period from 1935 to 1939. I don't know John Geary. I know Roy Love. He had a workshop about three doors south of the restaurant and he used to work around the Horse Shoe. I have seen him fix electric lights and also do some carpenter work. I never saw him do anything else around the Horse Shoe. Sometimes Mr. Johnson would come to the Horse Shoe two or three times a week and then again he would not come for

a month or two. He would also drop into the Dev-Lin and if there was a high game he would take over. When there was a game over the \$100 limit he would come in and take over the game. When Mr. Johnson took over the game there was no limit. He furnished the bank roll. He took it out of his pocket. He would have a big handful of currency. I did not notice which pocket he took it from. He would take out a great roll of bills. I don't know whether he took it from his coat pockets or his pants pockets. They were all denominations,—10's, 50's and 100's. He carried new money and old money, different kinds and different sizes of bills. The table would be checked to him when he took it over and when the play was over Sommers would close the table and put us to work at another table. Johnson did not handle the dice. He would deal sometimes and sometimes he would sit at the table and sometimes he would sit on the lookout stand and watch the game. I would stay at the table during the game. Johnson would bet with one or two or three or four or five men. Others could be in the game and be betting a dollar or two dollars. I would handle those bets. When the bets got too big for me he would deal himself. He would play wherever the big play was. He never handled the dice. He would stack his bank roll on the table and hold some of it in his hand. The bets he won were put in the box. I never saw a box filled up while he was betting. When the game broke up I don't know what was done with the money. I would go to deal another game. Sommers and Johnson used to check the game after it broke up. I don't know what happened to the money. Johnson used to play with a couple of brokers. I don't know the names of any of the players. When Jack Sommers was operating the game the box would be taken from the table every so often and an empty box put in its place. The runner would take the box to the money changer. The box would be changed two or three times a day, sometimes every hour, sometimes it would be two hours. When I was dealing I would stand right alongside the box man. A lookout stand is a high platform with steps leading up. You can look over the whole table from this stand. You can look all around the room if you want to. There was not a lookout stand at every table but at the main tables. There was one here and there. When Johnson was not on the lookout stand Sommers would get up there or a box man would be there. Koch and Walsh and Greenberg used to deal when Johnson was in the game.

I don't know of any others who dealt in his game. There was one money table at the Horse Shoe and the others were check tables. I don't remember how many money tables there were at the Dev-Lin,—one or two, depending upon the size of the crowd. Sometimes there were two and occasionally three money tables at the Horse Shoe 1131 on busy nights. Johnson came into the game only when there were players betting big money. If there were high rollers at different tables, they would all come to one table and he would take that table. I talked to Mr. Sommers about testifying in this case and also Mr. Thompson. I talked to the lawyer at his office about fifteen or twenty minutes a couple of nights ago. I met Mr. Sommers coming out of the barber shop a week or two ago when he asked me to come down. It was some time about 8:30 in the morning about a week or ten days ago. I was out driving around and just happened to run into Sommers.

JOSEPH FEINBERG, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I live at 165 North Pine Street and have lived in Chicago about thirty-three years. I have known defendant Johnson for eighteen or twenty years. I have gambled with him. I dealt Blackjack for Jack Sommers on and off from 1937. I worked for him at the Horse Shoe and at the Dev-Lin and for a short time at Lincoln Tavern. We were at Lincoln Tavern a week or ten days at the end of 1936 when we got chased out of the Dev-Lin. No one else was in the Lincoln Tavern at that time. Mr. Sommers was the boss in these places. He gave orders and supervised the gambling room. He fixed the wages and hours of work and the limits of the game and okayed the credit of patrons and settled disputes. I don't know defendant Creighton. I have known defendant Wait for a short time but never worked for him. Defendant Kelly used to shoot craps at Kedzie and 12th Street when I worked there. That was back around 1925 or 1926. I worked for Mr. Kelly for a short time at the D. & D. Club, say, about a month. Mr. Sommers had nothing to 1132 do with my employment there. I know neither defendant Mackay nor defendant Flanagan. I have

known defendant Hartigan for two or three years. I worked for him about five nights at Harlem Stables. I was out of employment and got my job from Mr. Hartigan. Mr. Johnson had nothing to do with getting me employment at any of these places. Mr. Johnson never employed me at any time. I have never known Mr. Johnson to do anything except gamble. He booked crap games twenty years ago when I first knew him. I used to see him frequently at a gambling house at Lincoln and Lake and at several places on 12th Street. Mr. Johnson confined his gambling to shooting craps.

Cross-Examination by Mr. Plunkett.

I saw Mr. Johnson gamble in the early 20's at the Lincoln Club. I have not seen him out there since then. I went to work at the Horse Shoe around 1937. I saw Mr. Johnson at different places prior to 1937. I saw him at 12th and Kedzie at Davey Miller's place. He was booking a crap game. There was no limit to the game. He covered whatever the player wanted to bet. I worked at 12th and Kedzie for about eight or ten years. Then I worked for a man named Adler at 12th and Homan around 1931 or 1932. I don't remember where I worked from 1933 to 1936. I was gambling at different places. After I went to work at the Horse Shoe there were times when it was closed. When both the Horse Shoe and the Dev-Lin were closed I worked elsewhere. I worked for about a month at the D. & D. Club. When the Horse Shoe was closed the Dev-Lin was generally open. There were times when both places were closed. I think they

were both closed about six months in 1938. I don't 1133 remember just when I worked the thirty days at the D. & D. Club. I drew some unemployment compensation in 1939. I worked at Harlem Stables five nights in 1937. From January to August 1937 I worked at the Horse Shoe. I dealt blackjack. I don't know John Geary, otherwise known as Bud. The floor men I knew at the Horse Shoe were Sullivan and Barre. I knew Roy Love. He had a carpenter shop nearby. I saw defendant Johnson sitting on the platform at a money game at the Horse Shoe. When Johnson was not there the box man used to sit on the platform. I also saw Sommers and Barre sitting there.

Q. Were you subpoenaed to appear down here?

Mr. Thompson: We object to that as immaterial.
The Court: Overruled.

I was not. Mr. Thompson and Mr. Sommers asked me to come down. Sommers called me at my home about a week ago. I met him at the lawyer's office. I had not seen him since last September when the Horse Shoe closed.

PHILIP GREENBERG, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 1330 Kedvale Avenue. I have lived in Chicago all my life. I started working for Mr. Sommers at the Horse Shoe about 1936. I was a money dealer at a crap game. I worked many places in Chicago prior to working for Mr. Sommers. Mr. Sommers hired and fired the employees at the Horse Shoe, gave orders, okayed checks and did everything else a boss would do. Mr. 1134 Sommers had a floor man by the name of Barre. I worked as a box man. My duties were to see that the players were paid off correctly and to settle disputes at the table if I could. If I could not settle them Mr. Sommers did. A box man sits between the two dealers and watches all the bets. The money box is in front of him. A dealer is on each side of him and the stick man is across the table. There are dice in a bowl by the box man. Any player has the right to take dice home with him. That was the policy of the Club. Anyone at a dice table could pick up a pair of dice in play and take them home with him. When a pair of dice were taken off the table I put a new pair on. The dice used by Mr. Sommers were marked "Horse Shoe". He had red dice and white dice. A dealer in a crap game takes all bets and pays all winners. He works with checks or chips and with five and twenty dollar bills. Dealers always stand when they are working. The lay-out on a crap table is the same at each end and a dealer works at each end. There is a string across the middle of the table between the box man and the stick man. The dice must roll across the string for a play. When a box man is relieved at a table he sits on a stand to watch the table. Mr. Sommers was always around the room giving orders. I worked for Mr. Sommers at the Horse Shoe and at the Dev-Lin and a few days at the Lincoln Tavern at one time. Mr. Sommers

performed the same duties at the Dev-Lin as he did at the Horse Shoe. I have known William R. Johnson four or five years by sight. He visited the Horse Shoe occasionally,—sometimes once or twice a week and again once a month. The same at the Dev-Lin. He would sometimes take charge of a dice table. If he took over the table Mr. Sommers would check it to him. The chip rack which held \$1 chips would be filled and full packages of working money would be put on the table. The old money 1135 would be put in the box and taken from the table.

Mr. Johnson would either sit down at the box or get in and deal himself. We always started with \$2,000 in currency on the table. There would be more if the game was big. When Mr. Johnson acted as box man he sat at the middle of the table and when he dealt he stood at a dealer's position. Mr. Johnson only played when there was a high game on. If he came to the Horse Shoe and there was no high game he would leave. Mr. Johnson never gave me any orders and had nothing to do with my employment at the Horse Shoe, the Dev-Lin, or any other gambling house. I have seen defendant Creighton but have never worked for him. I know defendant Wait by sight only but never worked for him. I worked for a day or so for defendant Hartigan at Harlem Stables. He was short a dealer and asked me whether I would fill in. I don't know defendant Flanagan. I worked for defendant Mackay at the Casino about three weeks. I asked him for the job and he employed me. Mr. Johnson had nothing to do with my employment at the Casino or at the Stables. I don't know defendant Kelly.

Cross-Examination by Mr. Plunkett.

I started to work at the Horse Shoe in 1935 as a dealer in a money game. I learned to deal dice about twenty years ago on the South Side. I worked all around Chicago before I started at the Horse Shoe. I worked at Cicero, at 51st and Indiana, at 43rd and Halsted, at 43rd and Indiana, and at 51st and Prairie. I have worked for Charles Stretch, Tom Barnes and Mr. Perlson. When I worked for Tom Barnes he was located at 5040 South Halsted. That was about twelve or thirteen years ago. Jimmie Hartigan did not work there while I was there. I never worked for 1136 Barnes at the Horse Shoe. I first met Jimmie Hartigan at Harlem Stables. I was never at the Horse

Shoe until Sommers took it over. In 1928 or thereabouts I worked for Harry Belford at the Dells. After that I worked at 43rd and Indiana for Perlson for about six months. Then I gambled on my own for a while. Then I worked on a bakery wagon for Silverstein and Finkelstein for about a year. That was where I was working before I went to the Horse Shoe. I was never employed at 4020 West Ogden Avenue. I was in that club about 1929 as a player. I have been there off and on since that time. I played Keno there in 1937. I was then working at the Horse Shoe days and I went over to 4020 a few times at night. I never dealt dice at 4020 that I remember. I might have for one night. I worked at the Horse Shoe days sometimes and nights sometimes. I worked days during 1937 and nights during 1938. I was taken off the day shift because I played the horses. There was a rule against playing the horses and I was fired for violating the rule. I was off about a month and then I was put on nights. I don't remember seeing a flashlight over the front door inside the Horse Shoe to signal that a bus was leaving. I know nothing about the bus system that ran between the Horse Shoe and the Harlem Stables. I never heard of such a service. When Mr. Johnson took over a dice table he would either sit at the box or on the lookout stand and watch the game. Mr. Sommers would have me check the table, fill up the chip rack with a thousand chips and take the loose money off the table. A new money box would be put on the table and fresh packages of money,—two or three or four,—would be left on the table. That money would be furnished by Mr. Sommers and checked by Mr. Johnson. Mr. Johnson would take 1137 money out of his pocket and deal with it. He would not need to take money out of his pocket unless more was needed than was on the table. There was usually \$2,000 in money on the table. This was working money. There is a percentage in a dice game in favor of the house. I don't know the exact figure. It is one and something. If the player rolls two aces the Do Pass players lose and the Don't Pass players break even. Players lose when they do not make their bet or their proposition. My best judgment is that the house percentage is about 1.4%. I don't know the percentage on the other side games. There were no slot machines at the Horse Shoe while I worked there except about ten for about two weeks. I don't know what years that was. I knew Barney McGrath. He worked as a box

man. I did not know John Geary. He was never a floor man while I worked there. When Johnson took over the dice table the same percentages held for him as they did for the house. I never worked for Johnson. He did not pay me for working when he took over the table. He would keep the table while the game lasted. It might be all night. All the money he won was his. He might start the game at 10 o'clock, then go until 3 o'clock in the morning, sometimes six or seven in the morning. I got paid overtime when we worked until 7 in the morning. I remember he played until 7 o'clock in the morning sometime in 1938 at the Dev-Lin. I was box man part of the time and Johnson was dealer. Part of the time Johnson was box man and I was dealing. I don't know the name of the player that kept at the game until 7 o'clock in the morning. He was some South Water Street man. There was a table full of players. Johnson quit winner but I don't know how much he won. Another player was a wholesale meat dealer. Another was a baker and another a bond salesman. I never knew their names.

Most of the players who were in this game at the 1138 Dev-Lin which lasted until 7 o'clock in the morning were regular players. In a normal game we usually started off with \$2,000 in working money. This would be in four packages of \$5 bills. The stack would be two or two and a half inches thick. There would also be checks on the table and sometimes a few \$20 bills. The \$100 limit permitted you to bet \$100 on any roll of the dice. You could bet some combinations that paid as high as ten to one. There was a further limit of \$300 on a roll, that is, your \$100 back and \$200 more. When Johnson had the table he would cover any bet. Johnson used money out of his own pocket for the high roller. I cannot say how large an amount I have seen him win. It has run into the thousands. When he was dealing he would hold money in his hand. Johnson would put money on the table, sometimes as high as \$6,000 or \$7,000 in big money,—100's, 50's and 20's. When the playing was high you had to use big money. Small money was not fast enough. Johnson used old and new money. You can deal old money if you know how. Johnson was a seasoned dealer and so was I. I never knew who was boss at 4020 West Ogden. Johnson had nothing to do with getting me a job at the Horse Shoe or any place else.

Redirect Examination by Mr. Thompson.

Mr. Sommers fired me for playing horses at the Horse Shoe and Mr. Sommers rehired me when I went back to work.

WALTER SASS, being first duly sworn, testified as follows:

1139 *Direct Examination by Mr. Thompson.*

I reside at 6032 Eddy Street, Chicago. I am a truck gardener. My truck farms are northwest of Chicago. I am acquainted with the location of Harlem Stables. I managed the property for the owners. The building was erected originally as an onion storehouse. The first tenants in the building were Uhler and Maringer. It was then known as the Yellow Lantern. Later the Glave brothers came along and they changed the name to Harlem Stables. Later Earl Jackson was the tenant. Defendant's Exhibits S-11(a), (b), etc. are rent receipts showing payments of rent by Earl Jackson in 1935. Defendant Hartigan rented the property about five years ago, about August, 1936. Mr. Hartigan came to me in the onion field where I was picking onions. Mr. Jackson was then four months behind in his rent. I had told him that something had to be done about this rent. Mr. Hartigan, with Mr. Sommers and Mr. Long, came over to my place and asked me whether Harlem Stables was for rent. I told him I was having trouble collecting the rent and if the tenant did not pay up the place would be for rent. Mr. Hartigan was doing all of the talking about renting the place. He said he would be back later. I talked with Jackson and told him I had a chance to rent the place and he told me he would get out if I gave him a little time. I rented the place to Mr. Hartigan. About a month later about midnight my phone rang and I was asked to come over to Harlem Stables to settle a dispute between Earl Jackson and the Glave brothers. I went over to Harlem Stables and they were arguing. Mr. Sommers, Mr. Long, Earl Jackson and the Glave brothers were present. I met three new people there,—William R. Johnson and Elmer Johnson and a lawyer representing the Glaves who introduced him-
1140 self as Tom Courtney's cousin. They asked me who was the owner of Harlem Stables and I said, "Well,

I am going to tell the truth regardless who it hurts." I then said to Russell Glave, "You came to my house last February and you told me you were absolutely through and that from now on I would have to deal with Earl Jackson, that he was the new owner." The Glave brothers were then four months back in their rent. I told them I had to get on the market and could not stay any longer that night but that if they wanted to come over to my home two nights later we could argue the question out. Two nights later the Glave brothers and their attorney and Jack Sommers, Frank Long and the Johnson boys and Earl Jackson and some other men, who had some account books, came over to my house. William Johnson sat in the parlor and talked with me and the rest of them went into the dining room and spread out some papers on the dining table. I did not see William Johnson give anybody any money. After the conference was over, all of them left my house.

Q. Within recent months have you seen either of the Glave boys?

Mr. Plunkett: We object to that as immaterial.

Mr. Thompson: It is important to get the facts about this matter.

The Court: Sustained.

A. Since Mr. Hartigan rented Harlem Stables in August, 1936, he has paid the rent. He paid \$200 a month until August of last year, then \$250 until January 1 this year.

Q. Was Mr. Hartigan at your home while this dispute was going on and being settled with the Glave brothers?

A. No, sir, he was home sick they said.

Mr. Plunkett: We object to what they said.

The Court: Strike it out.

1141 Mr. Plunkett: No cross-examination.

EARL JACKSON, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 2829 Lawndale, Chicago. I was employed at Harlem Stables in 1934 as a bar tender by the Glave brothers. I became the proprietor of Harlem Stables about the first of May, 1935. The Glave brothers then owed me back salary. I paid no money for the place. They turned it over to me to pay my salary. The Glave brothers had no

property there except a little bar about twelve feet long. The rest of the furniture and fixtures belonged to Riverview Park. When I took over Harlem Stables I sent about 800 chairs and 200 tables and two cash registers and a grand piano back to Riverview Park to the owners. I acquired new fixtures and furniture. I rented chairs and tables from the Roosevelt Catering Company. Later a brewery let me have some chairs and tables. About the first of August, 1936, I had a transaction with defendant Hartigan. I sold to Mr. Hartigan the different things I had in the place. The Glave brothers had no property at Harlem Stables when I turned over possession to Mr. Hartigan. I paid rent to Walter Sass while I ran the place. Defendants' Exhibits S-11(a), (b), etc. are rent receipts I received from Sass. After I sold Harlem Stables to Mr. Hartigan the Glave brothers came around again. They had an attorney with them. They had been to see me before, say, about two or three days after I closed my deal with Mr. Hartigan. It was some time late in the afternoon. The Glave brothers demanded that I turn over to them the money I had received and I refused. They assaulted me with a base-1142 ball bat and I had to call the police to throw them out.

I was present later when Mr. Sass was called to settle the dispute. This was about the latter part of August, I would say, two or three weeks after I sold the place. There was a lot of discussion and then Mr. Sass suggested that we come over to his house and thrash the matter out. Later we went to Mr. Sass' house. The Glave brothers and their attorney and Bill and Elmer Johnson and Mr. Long and some bookkeeper and some bar tender were there. The conference was held in Mr. Sass' dining room. Mr. William R. Johnson was never in the dining room. He stayed in the front room. An agreement was reached and a settlement was made with the Glave brothers and the bar tender. Mr. Hartigan was not there. I was told he was sick. I was working for Mr. Hartigan and he had not been down to his place of business that day. He had been away two or three days. When I inquired about him I was told he was ill.

Mr. Plunkett: I object to that.

The Court: Strike it out.

A. William R. Johnson did not offer any money in the settlement of this dispute. Mr. Sass lived about two miles from Harlem Stables. The bookkeeper present at the conference was Charles Kolarick. He had a claim against the

Glave brothers for back salary. I don't know the name of the bartender but he also had a claim against them. These claims were all settled that night. I saw Glenn Glave at the Bon-Air Country Club about two months ago.

Q. Were you in the waiting room of witnesses for this trial about Wednesday, September 11, when Mr. Watts was present?

A. I was.

1143 Mr. Plunkett: We object to all this entire question.

The Court: Sustained.

(The following proceedings were had out of the hearing of the jury.)

Mr. Thompson: Mr. Watts, who was a witness, told this witness he never saw Bill Johnson in his life, that he didn't know what they called him for, yet he came in and testified he was the man who paid over some money.

Mr. Plunkett: We object to the statement.

Mr. Thompson: I am making it to the Court.

The Court: Sustained.

(The following proceedings were had in the hearing of the jury.)

Q. Well, at this time when the Glave brothers or one of the Glave brothers last saw you,—which one was that?

A. Glenn Glave.

Q. Was there any further talk there about claims?

Mr. Plunkett: We object to that.

The Court: Sustained.

Mr. Thompson: If the Court please, they opened this and brought it all out and I offer this for the purpose of showing the whole story.

The Court: Sustained.

Mr. Thompson: We offer in evidence DEFENDANTS' EXHIBITS S-11(a), (b), etc.

Cross-Examination by Mr. Plunkett.

I have never worked for defendant William Johnson. I have worked at the Bon-Air for the last three seasons. I was working for the Bon-Air Catering Company. I never knew the Company was defendant Johnson. Previous to working at the Bon-Air I worked at the Dev-Lin and just before that at the Horse Shoe. Since I sold Harlem

1144 Stables I have been working at the places I named. I also worked about thirty days at Lincoln Tavern.

When I sold out Harlem Stables I went to work there. Jimmie Hartigan was my boss. I don't remember the name of the boss when Hartigan was sick. I think the first time I met defendant Sommers was when the Glave brothers came into Harlem Stables after Mr. Hartigan took it over. I saw him out at Mr. Sass' home. I don't know whether Sommers was running Harlem Stables when Mr. Hartigan was sick. Sommers was there the night of the big argument. Other than that I don't know whether he was at Harlem Stables. I was working outside parking cars. When the Glave brothers made their demands I was called in and asked about it. I later saw Mr. Sommers at the Horse Shoe and the Dev-Lin. I saw him once out at the Bon-Air where I was tending bar. I was parking cars at the Horse Shoe and the Dev-Lin and the Lincoln Tavern. I drew \$35 a week. I was paid \$5 a day. I am now working at a small night club called The Snow Drop located at Granville and Broadway.

Redirect Examination by Mr. Thompson.

I got my employment at Bon-Air through the bartenders union. Then I reported to Mr. Spagget, the steward. I have worked there only as a bartender.

Recross-Examination by Mr. Plunkett.

There is no relationship whatever between my giving up the Harlem Stables and my holding the jobs I have since that time.

1145 Q. Well, did the fact that you gave up the Harlem Stables to these men that were out there.—Johnson, Sommers, Hartigan—

Mr. Thompson: We object to the implication. He sold the Harlem Stables to Mr. Hartigan according to the evidence.

The Court: Overruled.

Q. Did that fact have anything to do with the work you got after that?

A. Mr. Hartigan promised me a job as part of the consideration.

My employment at the Horse Shoe and at the Dev-Lin and the Bon-Air had nothing to do with Mr. Hartigan's promise to give me employment.

Mr. Thompson: What is the Court's ruling on our offer of the exhibits?

Mr. Plunkett: We object to them on the ground they are immaterial and there has been no proper foundation laid.

The Court: Let us see them. They may be received.

JACK SOMMERS, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 6144 North Rockwell, Chicago. I have resided in the city for thirty-six years. I am thirty-eight years of age. When I first left school I was employed in the law firm of Hammer, Burchmore & Latimer in the Harris Trust Building. I left school in the eighth grade. I was an office boy for the firm for about a year and a half and then I worked about two years in the auditing department of the Pullman Car Company. When I was about eighteen I 1140 went to work for Harry Block who ran a cigar store and poolroom. I worked for him five or six years. When I was about twenty-five years old I went into business for myself. That was about 1926. I opened a cigar store and card room at 2403 West Division Street. I think I was there about three or four years and then I opened the Anchor Sandwich Shop at 4750 North Kedzie. I ran that shop about four or five years and then I sold it to Thomas Barnes. Toward the end of 1934, after Mr. Barnes' death, I bought the Horse Shoe from Mrs. Barnes. Mrs. Chalmers was then the manager of the building at 4721 North Kedzie. I paid \$200 a month rent for the second floor space. A year or so later I opened up the restaurant. There was no increase in rent when I took over the store-room in which I opened the restaurant. As you enter the restaurant there is a cigar store and cashier's desk. Beyond this is a lunch counter that will seat about fifteen people and some booths along the wall. The kitchen is in the back. There are steam tables where you can select your food. You can go directly from the restaurant up to the gambling floor. The stair rises along the north wall of the building and lands about the middle of the depth of the building. You enter the gambling room about the middle of the north wall. Immediately in front of the door are four or five dice tables down the middle of the room. To the

right of the door is the cashier's or money changer's stand, and then the vault in the corner of the room, and then south along the Kedzie Avenue side are the roulette wheels, the Red and Black game, and the poker game. In the rear of the room is the horse book. At the south end on the east wall is the office of the horse book where the sheet writers and cashiers work. Also along the east wall toward 1147 the front of the room were the check rooms and the rest rooms. In addition to the restaurant and the second floor space I rented a storeroom at 4715 North Kedzie. This was used for storage of surplus equipment. The front windows were whitewashed. I sublet the rear of the store to Roy Love for a workshop. I have known Love since around 1930. He was then working for Mr. Barnes. After I took over the Horse Shoe he installed some fixtures for me, did some carpenter work and cement work and repaired some tables and chairs. With the property I had the use of four of five garages in the rear. I used these for storage space. Sometimes when the gambling houses were closed, the help would gather in the front end of the storeroom at 4715 and play cards for pastime. Mr. Love had some garage space for storage as well as the workshop in the back of this storeroom. In the Horse Shoe gambling room I operated dice, roulette, blackjack and poker as side games and also a horse book. I never had a Keno game. I had a few slot machines for a while but have not had any for three years. I think it was in 1937 when I had eight machines for a short time, six nickel machines, one dime and one quarter. I do not know what percentage slot machines pay. The witness Cobb worked for me and was a change maker on the slot machines when I operated them. These machines attracted a few people. The number of employees at the Horse Shoe varied according to the business. Sometimes there were fifty and sometimes 150 divided about equally between the afternoon and evening shifts. The number of patrons varied from time to time. I would say there would be 300 or 400 horse players in the afternoon and perhaps 150 or 200 players at the side games when things were going well. In the evening there might be 600 or 700 patrons. I was 1148 the sole proprietor of the Horse Shoe restaurant and gambling house. I had no partner. I had no obligation to divide profits with anyone or pay anyone part of the profits of the business. No one was obligated to share any

of my losses. There has never been any one interested in my business in any way since I opened the Horse Shoe in 1934. I directed and managed the operation of the Horse Shoe. I opened the place and I closed it. I hired and I fired the employees. I assigned the employees to their work and fixed their hours. I paid all the bills and got all of the profits. When I wanted assistants I appointed them. Claude Sullivan was my assistant in the afternoon during the whole period I operated the Horse Shoe. In the evening Al Kalus and William Barre were my floor men. These men carried out my instructions. I fixed the limits on all the games. I settled disputes and I okayed credits. I made all purchases of supplies and paid all bills. Defendants' Exhibit S-12 is a money order purchased to pay Entry Service. There were many such money orders for similar service. Defendants' Exhibit S-13 is a receipted bill from the Entry Service Company for wall sheets and hard cards. These are used in the operation of the horse book. I have other receipted bills from the Entry Service for the year 1939. Supplies not purchased from the Entry Service were purchased from Edward Don & Company and Lien Chemical Company and other dealers in horse book supplies, janitor supplies, and so on. Defendants' Exhibits S-14 and S-15 are two receipted bills from Don's. The supplies covered by S-14 were delivered to the Horse Shoe and those on S-15 were delivered to the Dev-Lin Club. I ordered these supplies without directions from anyone and I paid for them myself. I bought my supplies for the side 1149 games from O'Neil & Company. Defendants' Exhibits S-16(a) and (b) are two bills covering gambling supplies purchased from O'Neil. There were hundreds of similar transactions represented by similar bills. Defendants' S-17(a) and S-17(b) are receipted bills from Dixie Coal Company, covering deliveries to the Horse Shoe and to the Dev-Lin respectively. Money order receipts are attached to these bills. There are many other similar receipted bills covering coal transactions. Defendants' S-18 and S-19 are receipts covering rent paid for parking lots near the Horse Shoe. There were many similar receipts issued. Defendants' S-20 is a receipted bill from Novak & Company, sheet metal workers, covering installation of a ventilation system in the restrooms at the Dev-Lin. Defendants' Exhibits S-21, S-22 and S-23 are receipts covering various telephone bills. There were many of these. De-

defendants' Exhibits S-24, S-25 and S-26 are receipts for gas and electricity at the Horse Shoe and at the Dev-Lin, and S-27 is a service contract with Commonwealth Edison for the Horse Shoe. I acquired the Dev-Lin which was located at 6430 North Drake, Lincolnwood, from defendant Wait and paid him \$5,000 for it. I leased the real estate from John Engstler. Defendants' S-4(a), (b), etc. are rent receipts given to me by Engstler at the times rent was paid in 1939. I have destroyed the 1936, 1937 and 1938 receipts. I was the proprietor of the Dev-Lin Club during all of the period after I purchased it from Mr. Wait and no one else was in any way interested in it and no one received any part of the profits or was in any way responsible for any part of the losses. I had about the same number of employees and operated about the same games at the Dev-Lin as I did at the Horse Shoe. In general the Dev-Lin was operated as the Horse Shoe under the same authority.

1150 When the Horse Shoe was closed the Dev-Lin would be operating and when the Dev-Lin was closed the Horse Shoe would be operating, generally speaking. Defendants' S-28 is a graph representing generally the periods when the Horse Shoe operated during the years 1936, 1937, 1938 and 1939. In 1936 the Horse Shoe operated from April to July and from November until the end of the year. In 1937 it operated the first half of the year. The Dev-Lin operated from June to September in 1937. For a week or ten days I was at the Lincoln Tavern. That was because I could not operate either the Horse Shoe or the Dev-Lin. I made arrangements with Mr. Hartigan to use the Lincoln Tavern. No one else was there when I was occupying it and no one was interested with me in the gambling club at the Lincoln Tavern. I do not have an independent recollection of the times I operated the Horse Shoe and the Dev-Lin in 1938. I get the exact dates from my Social Security records. These records were kept under my supervision and direction and truly represent the facts recorded. The chart, defendants' Exhibit S-28, refreshes my recollection as to the exact dates of opening and closing in 1938. I was open at the Horse Shoe from February 9 to March 18, at the Dev-Lin from March 19 to April 16, at the Horse Shoe from April 17 to May 24, at the Dev-Lin from May 25 to August 14. As I was closed at one place I opened at the other. I was closed at both from August 14 to December 3. Then I opened the Horse Shoe and stayed open to

the end of the year. In 1939 I operated the Horse Shoe continuously until June 1. The periods on the chart for 1936 are approximations from my public service bills. They are accurate as to months but not as to particular days. During the latter part of 1936 I was out at the Lincoln Tavern for about a week. I made arrangements for that with Mr.

Hartigan. Nobody else was interested with me in that 1151 gambling house during that period. Defendants' Exhibit 29-A is a proposal from Wendt & Krohn for some air conditioning at the Horse Shoe. It is dated March 27, 1939. Exhibit 29-B is a receipted bill bearing date May 31, 1939. About the time of these dealings I had a conversation with Edward Wendt and suggested that he might get some work at the Bon-Air Country Club. He had asked me whether I knew of any place where he might install another job. He got a \$7,000 contract at the Bon-Air. He went out there to collect and they wanted to pay him \$3,500 in cash and he did not want to carry the money. I arranged to have the cash delivered to him and later at his request I got the other \$3,500 and bought a money order for him and gave it to him. The money was paid to me by Mr. Bud Geary from the Bon-Air. I had known Mr. Wendt for five or six years when I contracted for the ventilating equipment covered by defendants' Exhibits S-29(a) and (b). I made the contract and I paid the contract price. No one else had any interest or connection with this contract or the paying of the bill. I know Leo Didier. He met me at the House of Niles in August, 1936, and asked for a job. I did not say to him, "I will have to see Bill Johnson." I told him that I had nothing to do with the House of Niles and that he would have to see Mr. Mead. I heard Russell and Glenn Glave testify. Mr. William Johnson did not pay any money to them in connection with the Harlem Stables settlement as they testified. Mr. Johnson did not pay any money to Peter Wadinski in settlement of his claim nor did he pay any money to Mr. Kolarick. Mr. Johnson was not in the conferences when the settlement was discussed and made. I know Robert Thibert who is in the bus business. I arranged with Mr. Thibert to furnish bus service between 1152 some time in the winter of 1935. Mr. Hartigan asked me whether I knew anyone in the bus business and I told him that there was a bus company located on Kedzie, a mile or so from the Horse Shoe and that I would

check there. I talked with Mr. Thibert and made the arrangement for Mr. Hartigan. The Horse Shoe was not open at that time. I don't know who paid for the bus service between Chicago and Lincoln Tavern. Later I had bus service from the Horse Shoe to the Dev-Lin and I paid those bills. There were a few times when I made payments to accommodate Mr. Hartigan. In December, 1936, when I was operating at the Lincoln Tavern I had bus service there. The same was true when I was operating at Lincoln Tavern in 1937. I paid for this service. I did not make arrangements with Mr. Thibert for bus service between Harlem Stables and Chicago. That was a continuation of the arrangement made with Mr. Hartigan when he was at Lincoln Tavern. I made no arrangements for bus service for Mr. Creighton. Mr. Thibert asked me whether he might use my name in making arrangements with Mr. Creighton and I told him he could. I don't know whether he arranged with Mr. Creighton for service. I know Thomas Kehoe who testified. I have known him for seven or eight years. He has worked for me at small jobs. I gave them to him out of sympathy. He made change for me at the restaurant at 4721 North Kedzie and he also worked in the check room there. Mr. Johnson did not say to Mr. Kehoe in my presence at the Dev-Lin Inn, sometime in 1935, "You go to work down at the cigar store at the corner of Kedzie and Leland." There was never any such conversation. There was a cigar store and restaurant operated at 4701 North Kedzie about 1935. That is about a half a block from the Horse Shoe in a different building. I never operated at 4701. I bought the restaurant equipment there from Mr.

Hartigan when he closed the place. I don't know
1153 whether Kehoe worked at 4701 in 1935 but I do know

Mr. Johnson did not tell him in my presence to go down there and go to work. I gave Kehoe \$10 a week out of sympathy but Mr. Johnson had nothing to do with the arrangement. Mr. Johnson had no authority to make any arrangements or give any orders at the Dev-Lin Club. I know Mr. George Lebbin. Mr. Johnson asked me whether I could give him a job. I do not remember the date. I employed Mr. Lebbin and I paid him. Mr. Johnson had nothing to do with his employment except to intercede for him. The equipment belonging to me and Mr. Hartigan which Miss Anderson of the warehouse testified about is located in two separate storage places. I pay for the storage of my

equipment and Mr. Hartigan pays for storage of his equipment. Both bills are sent to me and Mr. Hartigan reimburses me for his storage. The warehouse is a block and a half from the Horse Shoe and is five or six miles from Harlem Stables and seven or eight miles from the Lincoln Tavern. Mr. Hartigan had no place of business nearer the warehouse than the Stables. I know Nathan Cobb and heard him testify. I never had twenty-five or thirty slot machines in my place of business. He worked on the six or eight slot machines I had for a while and made change for the patrons. I discharged him because he was stealing quarters from the Red and Black table where he played as a shill. I employed Cobb when he worked for me and I paid him and assigned him his duties. Mr. Johnson had nothing to do with his employment or his discharge. I know Frank Singer. He asked Mr. Johnson to find him a job and Mr. Johnson spoke to me about giving him employment. Singer had worked at a news stand down town. Mr. Johnson had nothing to do with hiring him except to request that I give him a job and he had nothing to do with paying him or laying him off when I got through with him. Nearly every day somebody asked me to give some unemployed person a job. I know Herman Van Spankeren who testified about settlement of the lawsuit filed by his mother-in-law against me and others. He claimed that he had gambled in many gambling houses around Chicago and had lost a lot of money. I talked to some of the other defendants and they denied any liability. I settled with him because I did not want a disturbance raised which would get my house closed. I gave him \$1,000 and no one else contributed a penny to this settlement. Mr. Johnson had nothing to do with the settlement. I heard the testimony of William Brantman. I first met him at the restaurant at 4750 North Kedzie operated by Tom Barnes. Barnes introduced me to Brantman. Mr. William Johnson was not present. The conversation related by Brantman to the effect that Johnson brought him to me and asked him to explain to me about the drive the Government was making on gamblers for income tax never occurred. When Brantman began making out my income tax returns I did not know he was making out returns for any of the other defendants. I knew he had been making out returns for Mr. Barnes. I had no connection with Mr. Barnes. I was a patron in his restaurant when he introduced me to Brant-

man. That was after I had sold out to Mr. Barnes. I heard the witness Irwin Marcus testify. I did business at his currency exchange. I had been cashing checks at the Northern Trust Company. They asked me to deposit my checks and then draw out the cash and I told them that I cashed these checks as an accommodation and did not want them to appear in my bank account because they were not income. About a year later one of the vice-presidents told me that I was running a small banking business and that they preferred that I get my checks cashed somewhere else. I made arrangements with Mr. Marcus to cash checks and exchange currency. His was the nearest currency exchange in my neighborhood. He made a special arrangement to cash my checks for 25¢ a hundred.

Sometimes I asked for \$100 bills. These are used to pay off winners who have more than \$100 coming. When players won at the tables we asked them to leave the small denominations which we used as working money and to take money in large bills. When currency was exchanged, the amount did not represent profits or gains. I have the same amount of currency after the exchange as I had before. When checks were cashed the proceeds did not represent profits or gains. Some of these checks were cashed as an accommodation for neighboring business houses. Others were cashed for players who might quit winner or loser. As to each check I cannot tell whether it represented a profit or whether there was a loss in the transaction with the person who cashed the check. The amount of checks cashed had no relation to the profits or losses in my business. After I had done business with Mr. Marcus for a while I introduced Mr. Downey to him. I told him Mr. Downey would bring checks in to be cashed and that I would stand back of the checks. I think Mr. Downey was employed by me at the time. I do not know how Mr. Downey got checks from Harlem Stables or Lincoln Tavern which he cashed with Marcus. I know he had a brother working at the D. & D. Club and this brother would give him checks to take to the exchange to be cashed. I know nothing about checks being in envelopes marked with the initials "D. & D.", "L. T." or "H. S." When I discontinued business with Mr. Marcus I told him I was taking my business to a building around the corner. I did not tell him that this was our building. I said nothing about who owned the building. I did not know who owned the building where the new currency exchange

was being established. Mr. Hartigan asked me to take my business to the new exchange. I had known Mr. Hartigan for fifteen or twenty years and we had been friends for 1156 that long. When my places were closed I used to spend a good deal of time at Mr. Hartigan's places. If his places were closed he would visit with me. I had nothing whatever to do with operating the Harlem Stables which was one of Mr. Hartigan's houses. I did not hire or discharge any of his employees nor did I make any contracts for him except at his request. Mr. Hartigan had no authority at the Horse Shoe or at the Dev-Lin which I operated. He never hired anybody to work at any of these places but he has recommended people to me for employment. He had no authority over the employees at the Horse Shoe or the Dev-Lin and he made no contracts for these places. He had no interest whatever in my houses. During the short periods I operated at the Lincoln Tavern he had no financial interest in my business. I had no financial interest in his business at the Harlem Stables. I used to go to the Northern Trust Company about once a week to cash checks or exchange currency. Sometimes it would be twice a week and then there would be weeks when I did not go at all. The amounts of the transactions would vary. I don't think any of the transactions were less than \$3,000 and I don't know of any that exceeded \$5,000. When the Horse Shoe and the Dev-Lin were closed I had no checks cashed or currency exchanged. I know Albert Bissell and heard him testify. Defendants' Exhibit S-30 is a check he gave me dated September 15, 1937. I think it was post-dated about a month. I have known Bissell for three years or so. The check represented a loan to Bissell. He said he needed some extra money and would be able to pay the loan by the time the date of the check arrived. He said he was working for the Lionel Train Corporation and expected a bonus check. I never saw him after I made the loan to him. This was the first and only loan I ever made to him. He gambled occasionally at the Horse Shoe and at the Dev-Lin over a period of two or three years. He sometimes won and 1157 sometimes lost. He did very well. He went out a \$1,500 winner on several occasions. He was paid in \$100 bills. From the time I made the loan until I saw him in the courtroom I had not seen him. The loan was made around July, 1937. I did not call anyone on the phone to get authority to make the loan. I did not have a dial phone

in my place of business then or at any other time. He wrote out the check in my office. When I made the loan I never said, "I will get in touch with the boss." I had no boss in my place of business. The telephone conversation he related never took place. William R. Johnson had nothing to do with this loan nor with any other loan I ever made to anybody. The notations on the back of the check indicate payments that were made toward the end of 1938. I sent a man to make the collections. In May, 1938, he paid \$50 on the loan and in the fall he made other small payments totalling altogether \$125. That is all I have collected on the loan. I know Adelaide Rebman. She used to play Red and Black at the Horse Shoe. Sometimes she won and sometimes she lost. She asked me to raise the limit on the game and I did. I never reduced the limit as she testified. I never told her at any time that if she wanted a higher limit she would have to see Mr. Johnson. Mr. Johnson had nothing to do with fixing limits on games at my gambling houses. I never told Mrs. Rebman about seeing anyone in connection with my places and I never said to her or anyone else that if players had complaints they would have to take them to Mr. Johnson. I never mentioned Mr. Johnson's name to Mrs. Rebman. When I made out my income tax returns I got information from records I kept. These records were submitted to the accountants who made out the returns. Defendants' Exhibits S-31(a), (b), (c) and (d) are connected with my return for 1939. Exhibit 31(a) 1158 is the expense in connection with the operation of an apartment building I own. 31(b) is a work paper used by Mr. Radomski when he was figuring out my return. He made out the return at my home. Exhibit 31(c) is a report of the receipts and expenditures of my restaurant. Exhibit 21(d) shows my earnings in the gambling business. I used to keep the daily results of my gambling business on paper and then at the end of the month I put the total in a book. The records of the operation of the restaurant were kept in regular account books and these are still available. I did not keep regular account books with respect to my gambling houses because this was an illegal business. I arrived at the results of the operations connected with my gambling houses by starting with a certain bank roll and then at the end of each month I would determine the amount of gain I had. For example, if I started out with \$5,000 the first of January and at the end of January I had \$6,200 I had made

\$1,200. I put that down in my book and I went through the same general practice for each month. The slip of paper marked 31(d) shows the monthly items for the year 1939. I don't have any such memorandum papers for prior years. My wife and I have an account at the Northern Trust Company which was for our apartment building operations. I also have another account for my Social Security. My wife and I have a savings account. About February, 1940, I delivered to the Government agent my Social Security books and my restaurant books and my cancelled checks, copies of reports and other documents. In August and September, 1936, I was frequently at the Harlem Stables. I had no connection with its management and no financial interest in it. I was just visiting there. Mr. Hartigan was the proprietor.

In 1938 Mr. Hartigan was frequently at the Horse 1159 Shoe and the Dev-Lin. Mr. Hartigan had no interest in these places and was just visiting. Mr. Hartigan and I were never business partners. I had no interest in or connection with the D. & D. Club. I have never had any partnership in any business. I had no connection with or interest in the Casino. I think I was there once in my life. I had no connection with the 4020 Club and have never been there. I had no connection with Mr. Flanagan's place of business at 2141 Crawford and have never been in that room. I had no connection whatever with the Southland Club and have never been there. I have never been in any place operated by Mr. Creighton. I have known William R. Johnson for about fifteen years. He patronized a place where I worked fifteen years ago. I have never been associated with him in any business venture. He has no interest of any kind in the Horse Shoe restaurant or gambling house, and he has never had any financial connection with that place of business. Mr. Johnson has not now and never did have any connection with my operation of the Dev-Lin. I know that he plays at different gambling houses but I know nothing about his business relations with the proprietors of any gambling houses other than my own. I never knew until this trial started that Mr. Johnson ever filed an income tax return. I had no knowledge of any kind respecting returns he filed or what he reported. I never had a conversation with him of any kind respecting his income tax returns for any years. He never had any conversation with me of any kind with respect to my income tax returns for any year. The subject of making income tax returns or keeping

records therewith has never been discussed between Mr. Johnson and me prior to the return of this indictment. I never had a conversation with Mr. Creighton with respect to Mr. Johnson's income tax at any time nor with Mr. Wait nor with Mr. Kelly, nor with Mr. Brown nor with Mr. 1160 Mackay nor with Mr. Flanagan. The subject of Mr.

Johnson's income tax returns was never a subject of discussion between me or anyone else at any time or place prior to the return of this indictment. I have never done any act or said anything in connection with what sort of return Mr. Johnson should file in any year. I never had the slightest interest or concern in Mr. Johnson's income tax or his income tax returns. I never paid Mr. Johnson any part of the income of the Horse Shoe or the Dev-Lin. I never gave Mr. Johnson any money at any time in connection with any business establishment in which I had an interest. I have never been an employee of William R. Johnson. I have never been under his direction or control in any transaction of any character. I have seen Mr. Johnson gambling over a period of fifteen years in at least ten different gambling houses around Chicago. He gambled at the Horse Shoe and at the Dev-Lin during my operation of them. The limit on my dice game was \$100. When Mr. Johnson played he banked the game and had complete control over it. When players wanted to bet more than I could bet I tried to accommodate my patrons and would get in touch with Mr. Johnson. Frequently players would start with small bets and after making substantial winnings would then want to make large bets. They had nothing to lose but their winnings and I would not want to take that kind of gambling and go broke in one night. When Mr. Johnson would take over the table I would count the checks and the money on the table and Mr. Johnson would then take over the table. When he took over the table I had no further interest in it. I never read the statement, Government's Exhibit O-210, after it was written up. Some three or four 1161 days after I made the statement, Government's Exhibit O-210, I received a copy of it. I notice that in many places "Harlem Stables" was mentioned where "Horse Shoe" should have been used. Defendants' Exhibit S-32 is a copy of the statement which was delivered to me by Agent Sommers. The statement offered by the Government has been changed so that "Horse Shoe" appears where "Harlem Stables" was first written. I had never

had any connection with Harlem Stables in a business way and "Horse Shoe" is the correct name of my place. Where the statement says that I was introduced to Brantman by John Schiffman it should say that I was introduced to Radomski by Schiffman. I never made the statement to the effect that when the play got too heavy for me Mr. Johnson would handle it "for me". I have been questioned a number of times concerning my income tax reports. I also testified before the grand jury. I was questioned about Mr. Johnson's alleged ownership of the gambling houses which I operated. I was told with respect to my answers that if I did not tell the truth about what I knew about those gambling houses I would be indicted. I was indicted. There was another indictment returned against me besides the one on which I am being tried. Defendants' Exhibit S-33 is a copy of that indictment.

Mr. Thompson: We offer in evidence DEFENDANTS' EXHIBITS S-4(a), (b), ETC. which are the receipts for the Dev-Lin rent, S-12, S-13, S-14, S-15, S-16(a) and (b), S-17(a) and (b), S-18, S-19, S-20, S-21, S-22, S-23, S-24, S-25, S-27, S-29(a) and (b), S-30 (both sides of the check), S-31(a), (b), (c) and (d), and S-33.

The Court: Any objection?

Mr. Plunkett: We haven't seen them.

1162 Mr. Thompson: I should like to state in respect to all these earlier numbers which are receipts for certain various services and purchases that we have many other receipts of a similar character here in court which the Government are at liberty to examine but which we shall not offer because they are of the same general character as those offered.

Mr. Plunkett: We may save a little time if we could examine these during recess.

The Court: All right.

Cross-Examination by Mr. Plunkett.

I have known defendant Hartigan for about fifteen years. I first met him in a gambling house at Madison and Paulina streets called Hickory Slim's. We were both gambling there. I think George Handeler introduced us. After that I saw Mr. Hartigan quite often. Our friendship grew especially after I went into business on Division Street and he used to play poker there. I don't know

whether Mr. Hartigan was employed when I first met him. I never knew where he worked in later years. We started visiting at each other's homes about six or seven years ago, that is, after I took over the Horse Shoe. Before I opened the Horse Shoe I met Hartigan at various gambling houses. There were several on Twelfth Street. I met him at 12th and Kedzie. That was a lunch room and gambling house. I went out there to gamble. I don't know who owned the place. I am not sure where Davey Miller had it at that time. That was maybe twelve or thirteen years ago. That may have been a week after I had met 1163 him at Hickory Slim's. I used to go to Davey Miller's perhaps once or twice a week. Hartigan used to go there about as frequently. I also saw him at Division and Robey. I don't know who the owner was. I became a good friend of Hartigan when he began playing at my place at 2403 West Division Street. That would be in 1925 or 1926. I saw him quite frequently after that. I don't know where he worked prior to the time he opened Harlem Stables. I have known Ed Wait for five or six years. I don't remember whether I first called him at his home or whether I met him at the Lincoln Tavern. When I met him there he had some connection with the place but I did not know what it was. I saw him behind the bar. I went out there to talk to him about the Dev-Lin Club. After that I saw him three or four times a month, sometimes at the Horse Shoe and sometimes at the Dev-Lin. He would just drop in to visit. He never worked for me. I know he was connected with the Villa Moderne some time between 1935 and 1940. I have never been there. I have had no other business transactions with Mr. Wait except in connection with the Dev-Lin Club. I have cashed some checks for him as an accommodation. I knew he was a gambler but I did not know how he got the checks. I have probably cashed checks for Mr. Wait ten or twelve times during the period I have known him. I have never seen Mr. Wait running roulette wheels at the Lincoln Tavern, the Dev-Lin or at the Horse Shoe. I have known defendant Mackay for probably ten years. I think I have seen him perhaps a dozen times in the last five years. I have seen him at the Casino Club and on the street. I have visited the Casino Club two or three times. I knew some of the dealers that worked there. I have known Garrett Meade for perhaps fifteen years. I never knew him in connection with the Casino Club.

1164 When I saw Mackay in the Casino Club in 1935 and 1936 I thought he was the boss. I did not see Meade there. Mackay did not tell me anything about taking over the Casino from Meade. I have known John Flanagan for five or years years. He came to the Horse Shoe at my request. I wanted to make arrangements with him for wire service. I have never been in his place at 4020 West Ogden. I have seen him a few times since he came over to my place five years ago, perhaps five times. The only business transaction I ever had with Flanagan was in connection with wire service. I have known defendant Creighton about seventeen years. I should say I have seen him at least once a month in the past five years. I have met him at Lindy's restaurant, at the Palmer House barber shop and at the theater. I have never had any business transactions with him. I don't know where he worked prior to the time he opened the Southland Club. I knew he had a gambling house seventeen years ago. He used to gamble all around Chicago. I never knew that he was the box man at 4020 Ogden. I have never been there. I never knew where Kelly worked. I have known him for seven or eight years. I don't think he ever worked at the Horse Shoe. I don't know what Kelly was doing prior to the time he opened the D. & D. Club. I first met defendant Brown at his currency exchange. It might have been the first week it opened. Bernice Downey was there. Also the two people who worked in the vault. I don't know whether I bought the first money order that was issued by this currency exchange. I saw defendant Hartigan at the Bon-Air in 1937, 1938 and 1939. I saw him talking to people inside the entrance. I heard he worked in the gambling room. I don't know whether he was there regularly. I don't know what was going on at the Harlem Stables while Hartigan was at the Bon-Air but I imagine they were
1165 gambling. Hartigan never told me what he was doing at the Bon-Air. I have a lot more documents like the exhibits offered in evidence. There are probably a couple hundred cancelled checks. I think they are at Judge Thompson's office. Prior to bringing them down to his office I had them in my file. They have been at the Hollander warehouse since last September. Prior to that they were at my office at the Horse Shoe or at the Dev-Lin. No Government agent ever asked me to see them and I have never shown them to one. I had a conversation with a Government agent and I told him I had books and records.

I was talking to him in my restaurant and the books were right there. I told him then that I had no records pertaining to my gambling business because it was an illegal business. This little sheet of paper on which I wrote down my monthly take is a little record of my gambling business. The agent did not ask to see that. I told him I was keeping it and that I had kept it the same way for years and he was satisfied. I did not show him the Bissell check for \$450. It probably would never have been mentioned if he had not testified here. What I have collected on that check is a certain portion of my income. I have quite a few more checks like that. They are bad checks. Just souvenirs of my business. I showed some of them to Mr. Thompson. I have tried to collect some of these checks. I have sent a collector to no other office than Bissell's. I sent my doorman Frank down there. I tore this little sheet of paper out of the notebook I kept it in. I tore it out in Mr. Thompson's office to bring it here. The other pages are all blank. After I paid my tax for prior years I destroyed the old records. After my tax was accepted I did not think there was any more use for them. I have never had my returns checked a year or two later. As soon as I gave my figures to Brantman or Radomski I tore up 1166 the memorandum because I thought it would not be needed any more. After that I could defer to the copy of my income tax return. It would show the total for the year. Defendants' Exhibit S-31(d), the little sheet containing entries, I think was made up in March or in the month previous in 1940. I think all the entries were made at one time from other sheets I have. I think it was made up at the time I filed my income tax return. I destroyed the sheets from which the information put on this little sheet was taken. They were just pieces of paper, one for every month. The little sheet for January, 1939, showed \$1,206. That was all that was on that sheet. It was about four inches long and three inches wide with one figure on it. I had twelve such sheets at the end of the year. I kept these sheets in my safe. I made one up every month. I did not carry the little notebook with me. I don't know whether the book is now in Mr. Thompson's office or whether it was put in the waste basket. When I came to file my return I had these twelve sheets of paper on which was written the monthly take and I copied those little sheets in my notebook and then gave that to Radomski. In 1939 there were nine sheets, not twelve. I gave a total of the

nine to Radomski. There is no particular reason why I did not tear up that sheet last March, as I did for the other years. I think I had been indicted and I thought I might need it. There was no particular reason for keeping the little book. I did not give the nine little sheets to Radomski because I think the entries were made in the little book before March. Those little sheets were all kept in my safe and they were the only records I had of my gambling business. The only record I kept in the gambling room at the Horse Shoe was what I started with and what I finished with each day. There were sheet writers in the horse book and when a customer made a bet it was written down on a sheet. The sheet writer turned a copy of 1167 each sheet over to the cashier and then the cashier made entries on the sheets. That is not a daily record of my business. When the day is over I receive the money. At the end of the day I could have computed from those sheets how much I had won or lost in the horse book. They showed what I had done at the end of the day. I knew what was going on in the horse book all the time. I destroyed the duplicate sheets made by the sheet writers when the day was over or a few days later. Each cashier audited his own sheets. There was no occasion for me to reaudit them. I trusted my cashiers. The man in charge of the book could total up the duplicate sheets and see what was being bet in each race. The originals went to the cashiers. The duplicate sheets made at my book did not go to 4715 Irving Park and were not destroyed there. The only sheets that ever went to 4715 Irving Park were those showing lay-off bets. I did not send all of my sheets over there. Each of my cashiers audited his own sheets and I took his word for it. No cashier could hand a friend \$500. He only had the original. I had the duplicate. He could not change it. He could not take a bet from a friend and mark it a win on the original sheet. The cashier paid out the winning bets and he entered his pay-outs on his sheet. He checked his own sheets. I did not audit them. The man in charge of the book would know what bets were made on the different races. He would see the pay-offs. Eddie Gates was in charge of my book. He checked over the sheets occasionally. He worked under my direction. It was my instructions that he check the sheets. I was not there every day to see whether he did or not. It was my duty to look after everything there. I was the owner of the place. I

had confidence in the people working for me. In the
1168 side games,—roulette, dice, etc., the money changers
or cashiers as you call them, kept pay-out sheets. He
also had a scratch sheet that was used to total up the
day's business. The stub of the pay-out book was the same
as the pay-out slip. It is a book of small sheets stapled
together and perforated across the middle, and numbered
from 1 to 50. The amount paid out is marked on each end
of the sheet which is about an inch and a half long and
probably an inch wide, and one end is torn off and given
to the cashier. I could get money from the cashier without
a cash-out slip. Mr. Johnson could not get money from the
cashier without a pay-out slip. I heard Cobb testify about
Johnson taking money from the cashier to hand to Cheesey,
but I know no Cheesey and such a thing never happened.
At the end of the day I destroyed the pay-out slips and the
cashier's sheets after I had checked them against each
other. I just threw them in the wastebasket and they were
later dumped in the garbage box on the rear porch and
picked up by the city truck. I did not expect people to be
looking in wastebaskets to see what I was doing. I was
not afraid a Revenue Agent would find these slips. I had
plenty of room to keep these daily records but I did not
think they were of any use to anyone. The cashier's sheets
would show how much had been made in the side games at
the end of the day. From the sheets in the horse book and
the sheets in the side games I knew how much had been won
or lost at the Horse Shoe at the end of every day. If all the
sheets had been kept they would not show exactly my in-
come for the year. Sometimes I made pay-outs without
making slips. If a cash-out was called for at a table a
ticket was made out and delivered to the money changer
and the money brought back to the table. At the begin-
ning of the day the box man starts out with a certain
1169 amount of cash or table bankroll. He might start
with \$500 or \$1,000 or \$2,000. My own judgment
would determine the size of his bankroll.

Q. And thereafter in the course of the play it was the
duty of the box man, was it not, when the money was won
at that table to put it in this box?

Mr. Thompson: We object to all this. It is improper
cross-examination and immaterial to any issue in this case.

The Court: Overruled.

Money that was won and also that was paid for checks
went into the box on the table. When the box was taken

from the table the cashier did not make an entry. I took the money from the box and put it in my pocket or in the safe. The cashier had nothing to do with it. When a player won say \$50 the box man called out, "\$50 going out." If a shill won \$50 he merely called out, "\$50." When the box man called, "\$50 going out," the floor man wrote a pay-out ticket and half of it was given to the cashier. He kept the ticket and paid out the \$50. He made an entry of the ticket on his sheet. At the end of the day the sheet shows his pay-outs and nothing else. At the end of the day I know how much money he has paid out and I know how much he has kept. Sometimes there are two cashiers on duty. Sometimes I have acted as cashier and sometimes the floor man and sometimes two other people were there. I don't call them cashiers. I call them money changers. If I was busy a money changer would count the money in the box that was taken off the table and put a slip on top of it giving the total. He made no entry of this total. There were no other records of the gambling business at the Horse Shoe kept. I had a card index of persons who cashed checks which showed the amount of credit to be extended. Usually I had their 1170 business card or other identification attached to the credit card. If I wanted to get a credit report on a customer I would get it from Mr. Brown or Mr. Marcus. I don't know where this credit file is now. It is probably in the warehouse. There were probably a hundred credit cards in the file.

Mr. Thompson: We object to this as not proper cross-examination and immaterial.

The Court: Overruled.

If Mr. Kelly telephoned me from the D. & D. and asked about the credit of some person I would tell him. If he had asked about how much Bissell was good for I would have told him he was good for nothing. If any of defendants had called about cashing a check for someone in their place I would have given them information whether I had cashed checks for the individual. At the end of each day I tore up the cashier's sheets and pay-out slips for the side games and the cashier's sheets for the horse book. I was not told by Brantman or Radomski, my tax consultants, that I was required to keep books and records of my gambling business. Whatever they told me to keep I kept,—that was my total of what I made at the end of

each month. The lay-off transactions I had with Flanagan were a part of his service. The race horse service I bought from him included his taking lay-offs and also daily doubles. I paid \$5 a day for this service. There were two wires,—a broadcasting service and a two-way phone service. I did not know the voice that spoke over the loud speaker. On the two-way phone I have talked to Mr. Flanagan and also to Skinny Moss. I don't know Joe Conroy. I have never seen the person whose picture you show me,

Government's Exhibit O-125. I don't know him un-1171 der the name of Morgan or Conroy or any other

name. I talked with Flanagan over there both in the afternoon and in the evening. I would send over pay for this service daily. Occasionally two or three days would pass. The manager of my book would drive over after the races closed and give it to Flanagan. At the same time he delivered the hard cards and the lay-off sheets. He did not take a receipt for the service fee. I have never been in the place on Irving Park Boulevard nor was I ever in the place at 2141 South Crawford. The sheets taken over there were for lay-off bets and daily doubles. They were given to Mr. Flanagan. I sent them over to verify the bets and the amounts. I imagine Flanagan had a record of these bets. There were several sheets containing lay-off bets and daily doubles. The bets recorded on the sheets would be lay-off bets or daily doubles. They would be separate sheets. When the sheet writer took a bet he did not know it was going to be laid off. The book manager arranged that. When a lay-off bet was made a new sheet was made. Defendants' Exhibit S-31(a) is a sheet showing the expenditures at my apartment building. I made that up from my check book stub at the time I compiled my income tax information. These are not expenditures of the Horse Shoe. All the expenditures at my apartment building were paid by check. I made no list of expenditures at the Horse Shoe. They were paid by cash. I just took money and paid the bills. There was no occasion to keep records. I did not have to account to anyone. Sometimes I okayed a bill and the money changer would pay it and keep the receipted bill and then I would put it in a file. I did not always get a receipt for payments I made. I never kept a list of expenditures at the gambling house. I was told by a Government Agent that

1172 I did not need to do that. It was in 1938. He assessed me \$4,000 and I paid it. I think it was for the

year 1937. He figured out the amount by taking the number of sheet writers and the number of cashiers and the number of bets on each sheet and how much money I handled and then said I owed another \$4,300. I paid this rather than get closed. I opened the Horse Shoe gambling house either in December, 1934, or in the beginning of 1935. When I bought the business from Mrs. Barnes there were some tables and chairs in the room. I paid her a thousand dollars. I have not seen her for more than a year. I heard she was in West Virginia. She gave me a receipt for \$1,000 but I destroyed it. That was five years ago. She sold Hartigan the restaurant. Prior to the time I bought the Horse Shoe I had owned the Anchor Sandwich Shop. I think I sold it about two years before I bought the Horse Shoe. It was located at 4750 North Kedzie, a half block north of the Horse Shoe and across the street. There was a card room in the rear. I have made no effort to find out exactly when I sold this shop. Before I opened the Anchor Sandwich Shop there was a Hollywood Club operated there, I think in the early 20's. No Hollywood Club was operated there in 1930. There was a Hollywood roller skating rink up the street a half block. I opened the Anchor Sandwich Shop in 1926 or 1927 and was open five or six years. My dates may be wrong but I was there five or six years. I was also on Division Street about the same length of time. I am not able to fix the dates any more definitely. I would say I had no place of business of my own a year or a year and a half before I opened the Horse Shoe. During that period I was gambling. I used to play poker in a flat above 4750 North Kedzie. Tom Barnes was running it. I had sold the shop to him and then I went back and gambled at 1173 his place. I would say I had the Anchor Sandwich Shop early in 1933 and that I had been running it about five years before that. I paid rent to Mr. Faherty. Government's Exhibit R-35 is my income tax return for the year 1932. It shows "Miscellaneous commissions, \$8,373." That was gambling winnings. I was then running the Anchor Sandwich Shop and had a gambling house in the back. There is no return on there for proceeds from the Anchor Sandwich Shop.

Q. Do you have the books and records of the Anchor Sandwich Shop?

Mr. Thompson: We object to all of this as immaterial and improper cross-examination.

Mr. Plunkett: I think the direct examination has opened the entire field.

Mr. Thompson: The direct examination was on things material to this case but this is altogether immaterial. Whether Mr. Sommers put things in his return is not an issue in this case.

Mr. Plunkett: His returns are in evidence.

Mr. Thompson: We didn't put them in evidence.

The Court: Let's see the tax returns. What is the specific question now?

(Question read.)

Mr. Thompson: Now if the Court please, that just can't be material to anything in this case and it is obviously outside the direct examination. Mr. Sommers is not on trial on his own income tax returns way back there in 1932.

The Court: Objection overruled.

A. The answer is "No". I kept no books and records.

Q. I show you Government's Exhibit R-36 and ask you if that is your tax return for the calendar year 1933?

1174 Mr. Thompson: We object to that as improper cross-examination.

The Court: Overruled.

Q. You signed that, did you?

A. I did.

Mr. Thompson: We object to that as improper cross-examination.

The Court: Overruled.

Q. You swore to it, did you?

A. Yes, sir.

Q. That shows an item of miscellaneous betting commissions, \$6,492. Do you know what income that was, where it came from?

Mr. Thompson: So we shall not have to interrupt, may we have it understood that all questions regarding this return are objected to on the ground that it is improper cross-examination?

The Court: Yes. Overruled.

A. The item "Miscellaneous betting commissions, \$6,492," came from betting, gambling here and there. I had a small restaurant. The receipts appear in that figure. I could not tell you whether I made a profit or a loss in 1933 on the operation of this restaurant.

Q. I will hand you Government's Exhibit R-37 and ask you to state whether that is your tax return for the calendar year 1934.

Mr. Thompson: Now if the Court please, so I shall not have to interrupt, I object to any question regarding this income tax of Mr. Sommers as improper cross-examination and as carrying the implication that he made an improper return for that year. This is altogether outside the issues in this case.

The Court: The examination in respect to this other year did not develop as I anticipated. What is your theory?

Mr. Plunkett: Well, it is the theory of the Government that we have proven in this case that defendant Sommers was working in the Horse Shoe restaurant.

The Court: Let the reporter step over here.

(Whereupon the following proceedings were had out of the hearing of the jury:)

Mr. Plunkett: The Government has shown by its evidence that defendant Sommers was employed in the Horse Shoe gambling establishment as early as 1932. He was working there with Tom Barnes. We have had several witnesses who have testified to that. This witness has stated he worked in no capacity at the Horse Shoe but bought the place in December, 1934. Our evidence has shown that he was working there and the testimony of Brantman was that he was working there and that he made out these returns for him there. We have the right to test the credibility of the witness by his own tax returns which are admissions against him.

Mr. Thompson: Admissions of what?

Mr. Plunkett: Admissions for whatever they are. He made those statements. We claim we have the right to show by these tax returns that the tax returns are entirely consistent with the Government's theory that he was employed at the Horse Shoe and not running the Anchor Sandwich Shop. We show by the returns that there is nothing showing he was in the Anchor Sandwich Shop in the years he stated.

The Court: Overruled.

Mr. Thompson: We object. It is all without foundation and the statements of fact are not according to the record.

(Whereupon the following proceedings were had in the hearing of the jury:)

1776 That is my return for 1934. I signed it and swore to it. The \$6,785, miscellaneous speculative earnings, are profits from my business and my gambling. I

see the word "Salary" there. I never wrote that and I never saw it there until it was brought into this courtroom. I never told Brantman that my income was salary. I have never told him that any amount I ever returned was a salary. Government's Exhibit R-38 is my return for 1935, which I signed and verified. There is no salary on there. Under the item "Salary, wages, commissions, fees, etc." appears \$4,880. I received this money from the people I won it from. I was gambling here and there and everywhere. I was then the owner of the Horse Shoe. The Horse Shoe might have been closed and it might have been open part of the time. If it was open I was certainly there. If it was closed I was gambling other places. Government's Exhibit R-39 is my return for 1936. It shows miscellaneous income as speculator, \$11,000, and a net loss from business \$1,495.60. I think the loss was from the restaurant. Government's Exhibit R-40 is the return for 1937. The income listed, speculator, \$19,274.38, was taken from my little monthly sheets. It added up to that amount. The return shows a loss of \$9,274.38 from the Horse Shoe restaurant. The difference left an even \$10,000.

Q. Was that a coincidence that that \$9,274.38, both that loss from the Horse Shoe and the gain from the gambling?

Mr. Thompson: I think this is all improper cross-examination. I can't see the object of it.

The Court: Overruled.

A. I think I made the loss equalize the other item so that it would be easier to figure and I think I gave the Government the best of it. I did not take any of the best of it.

The Witness: The difference of \$10,000 is not just 1177 salary from William R. Johnson. I never received one penny from Mr. Johnson. I charged off Christmas dinners, etc., which I served free as expenses. I cannot explain any better the \$9,000 loss made in the restaurant. Government's Exhibit R-41 is my 1938 return. It shows a restaurant loss of \$1,018.29. I affected this saving by getting rid of some of the help. The profits were going into the garbage can. Government's Exhibit R-43 is my return for 1939. It shows a profit on the restaurant of \$657.37. The larger figure, \$11,243, is my gambling profits. I did not mention the Anchor Sandwich Shop on my returns for 1932 and 1933. I just put down a grand total of what I earned. When I was running this shop

I think Barnes was located in the 3800 block on Lawrence Avenue. He also had a place across the street from me. He had three or four places. He moved from one to the other. He was not operating them all at one time. I don't know whether Tom Barnes was sick quite a while before he died. I think I went to his funeral. I had not missed him around the Horse Shoe after June, 1934. I know the witness Hayes. I know nothing about the conference which he testified about between Johnson and Hartigan and Barnes. I was not working on the lookout stand at the Horse Shoe when such a conference took place. I know nothing about who operated the Horse Shoe while Mr. Barnes was out because of illness. I might have been in the Horse Shoe during that period. I might have gambled up there. I paid no attention to who was running the place. It did not concern me. I played poker against other patrons up there. I think it was the last week or ten days in December, 1935, I operated at the Lincoln Tavern. I was closed in the city. I got the place from Mr. Hartigan. He had been operating out there but I don't know how long. I asked him for the 1178 use of the place for a week. I think I called him at home and made the arrangement over the telephone. There was nothing in writing. When I got out there the room was empty. I moved some of my equipment there. I don't think the restaurant was in operation but I did not move my restaurant equipment there. I had no restaurant at that time. I think I may have served sandwiches at the Lincoln Tavern. I don't know how long Mr. Hartigan had not been operating when I went out there. When I called him up I knew he was not using the place. I don't know where his equipment was. I operated about a week or ten days in December, 1935. Then I think I moved back to the Horse Shoe. The police chased me out of the Horse Shoe when I went to the Lincoln Tavern. They did not raid my place or arrest me. They just chased everybody out. I may have been at the Dev-Lin after I was at the Lincoln Tavern. I am not sure. I may have been out of action for a while or I may have been in some other spot. The chart does not show any operation by me at the Lincoln Tavern. I made up that chart with respect to the Horse Shoe and the Dev-Lin from my Social Security records. They were always carried under the name of the Horse Shoe but our

key sheet showed whether I was at the Horse Shoe or at the Dev-Lin. Mr. Kimmel drew the chart. The dates were taken from the Social Security books that are in evidence here. My bookkeeper made up the key sheet with the assistance of someone in Mr. Thompson's office. The only way I know the chart is correct is by comparing it with the key sheets. According to the chart I first opened the Dev-Lin June 15, 1937. I am not sure whether that is the first time I ever operated there. I don't know what the key sheets show in that respect. I did not compare the key sheets with the chart. I think the chart is accurate. I don't know anything definitely. I don't know

whether I was at the Dev-Lin a year before June, 1937. I can't remember. I bought the place from

Ed Wait. I needed another place and I bought it. I don't know whether I saw him at home or at the Dev-Lin. I received his telephone number from Mr. Engstler. I went out and looked at the place and talked to Engstler about it. He told me he had a tenant there and then he gave me his phone number. I did not know Wait prior to that time. After that I had a conversation with Wait about the place. I bought the lease from him for \$5,000. I gave him \$2,500 cash and the other \$2,500 later, both payments in currency. I think I got a receipt but I haven't got it now. I operated at the Lincoln Tavern a second time for a short period. I think it was about the middle of 1936. It was a warm month. I made arrangements with Mr. Hartigan as I had before. I think he was at dinner at my house and said he was not using the place at the time. My key sheets would not show the date in 1936 because the Social Security records did not start until 1937. The last time I used the Lincoln Tavern was a few weeks in the summer of 1937. I am a little confused about these years. When I went to the Lincoln Tavern I moved out some of my equipment. During the years 1937, 1938 and 1939 I operated at the Dev-Lin. It was not operated by anyone else during that period. I beg your pardon, I did give it to Anton Moody for about three months. He asked me whether he could operate a horse book there and I told him he could. He made application for public service and opened up there and was there two or three months. I knew that he was a book-maker but that is all I knew about him. He paid me rent and he paid his own light bills. After he left there I

don't know where he went. I don't recollect his ever working for me. I would say he did not. I had known him for perhaps a year before I leased the Dev-Lin to him.

In addition to paying my own bills I have paid some 1180 bills for Mr. Hartigan. I have paid telephone bills for him and bus service bills and light bills. I paid these bills because he asked me to. I would be out to his place and he would give me the money and ask me to pay the bill for him. I may have paid telephone and light bills for the Lincoln Tavern. I don't think I ever paid a bill for the House of Niles. I am pretty sure I did not. Government's Exhibit S-24 is a bill which I paid for the Dev-Lin. I think it covers from July 31 to August 30, 1939. I was then located at 6445 Drake Avenue, Lincolnwood. The bill was mailed to Box 118, R. F. D. I think that is Mr. Engstler's box. The Dev-Lin is located in Lincolnwood but Morton Grove is the postoffice. It is a contract for telephone number Kildare 9445 at 4301 Harlem Avenue, which is the Harlem Stables. Mr. Hartigan wanted telephone service quick and I made out the application and signed it and got his phone for him. I was able to get service fast because I knew a few people at the telephone company. I didn't know Mr. Moore who testified here. I don't know G. W. Ryder. I made out another application or two for telephone service at Harlem Stables. I don't know who took the contracts. I signed the contract but I don't know whether G. W. Ryder whose name appears on there signed it for the company. I got fast service. I don't know how long the telephone installed at Harlem Stables remained in my name. My signature is on Government's Exhibit T-7. I saw Hartigan sign that. It was signed April 6, 1939. The service was changed from my name to his. I had no discussion with Hartigan whether the phone should remain in my name or go back to his. I think I received the bills for this phone while it was in my name but Hartigan paid them. I paid some of them with money he gave me. I did not complain of this phone being left in my name 1181 because friends do not complain. There was a telephone up at the Horse Shoe in Hartigan's name. When Hartigan had the restaurant at 4701 North Kedzie, I think the phones were under Barnes' name and they were changed to Hartigan's. It was Barnes' restaurant and Barnes' loft. I don't know whether Hartigan ever had

anything to do with the gambling quarters upstairs. I think the telephone number was Juniper 1818. Government's Exhibit T-15 carries Hartigan's signature. That is the phone I spoke of. It says it is at 4721 North Kedzie. Hartigan had a restaurant at 4701 North Kedzie. That was a half block from 4721 North Kedzie. I don't know what connection these two places had before I was at 4721. This contract is dated March 13, 1935. I am not sure whether I was at the Horse Shoe then or whether I went there in May. I am not sure of the dates. I have no way of making sure. Mrs. Chalmers' rent records do not refresh my recollection. I think I signed a lease with Mrs. Chalmers when I took over the place. I don't know whether I started May 1 or January 1. That is five years ago. I probably had the phone put in my name in 1938. Government's Exhibit T-15 bears my signature. Hartigan never paid any bills for me. I have paid bills for him. He lives in Berwyn and I live in Chicago. I paid the bills for the Horse Shoe and the Dev-Lin. I paid some of them for the Lincoln Tavern and Harlem Stables. I do not think I ever paid a bill for the House of Niles. I do not remember the circumstances of changing the telephone at the Horse Shoe to my name. There was no particular reason why I did not take out the telephone for Harlem Stables in Hartigan's name. I could have signed his name and if I had known there would be an issue about it I would have done that. I remember Jungwirth, the drayman. I employed him to haul things back and forth. I employed him to haul from Kedzie and Lawrence to Tessville and from Tessville to Kedzie and Lawrence and to the warehouse. I might have loaned a table to someone and had him deliver it. I think I loaned a table to Hartigan at the Lincoln Tavern. I have loaned tables to church bazaars and other organizations that were running affairs to make money. I don't remember loaning any equipment to other defendants. I may have loaned thirty-two chairs to the D. & D. Club. The only chairs I could have loaned would have been bentwood chairs. I used them in the horse book. I don't remember sending tables to Ed Wait at the Villa Moderne nor getting any rugs delivered from the Villa Moderne to the Horse Shoe. I have never sent anything to the House of Niles or to the Casino. I don't think I sent a Twenty-one table over to the Casino. Government's

Exhibits O-157 and O-162 are duplicates of bills which I may have received from Jungwirth. I know nothing about the writing on the back of those bills. It does not refresh my recollection. I notice "D. & D. Club, 32 chairs." I don't remember but I may have loaned Kelly some chairs. Marcus operates the Albany Park Currency Exchange. I made an arrangement with him to cash my checks for 25 cents a hundred. I carried my checks over at first and later I sent them over by one of the Downey boys. It was M. Downey. I knew him by his nickname "Koog." I don't know whether his first name was Maurice. I think he was working for me when I introduced him to Marcus. I think he was driving. I would ask him to pick up the checks. I told Marcus that I would stand behind all the checks that Downey brought in. I did not know then that Downey was getting checks from other persons to cash with Marcus. If he had brought in checks from other persons I would have stood behind the checks. I had vouched for Downey. Quite often checks cashed by Marcus were not paid. Marcus would phone me about these checks, if they were checks I had sent over there. He would not call me about checks that I had not sent over. I did not keep a list of the checks. I just knew 1183 whose check I had cashed. Sometimes I brought eight or ten or fifteen or twenty in a day. Sometimes it would be two or three days before I would hear about the checks. I remembered every check I cashed. I remembered the maker and I knew whether it was my check when he would phone me about it. He never called me about the checks of anyone else. Later on Kelly sent checks over to Marcus' exchange but Marcus called me about Kelly's checks. I guaranteed Mr. Downey but I did not guarantee Mr. Kelly. I think checks were also being brought in from Harlem Stables. I know nothing about Marcus' little numbering system,—one, two, three,—which designated where the checks came from. I never saw one of these numbers on a check that I got back. When I left Marcus I did not give him any reason. I just told him I was going to do business in a building around the corner. I was solicited by Mr. Hartigan to take my business to Mr. Brown. Hartigan did not introduce me to Brown. I just went in and told him Hartigan sent me and I cashed some checks there. I made the same arrangements with Brown respecting Downey. The Lawrence Avenue

Currency Exchange operated by Brown was located in a bank building about 300 feet from where Marcus was located. I did not then know who owned the building. I have heard that Skidmore owns it. I have never heard that Johnson owned it. I think I gave Brown checks to cash the first day I introduced myself to him. About a month later I loaned him an old check protector which I was not using. The checks cashed for me were endorsed, if the checks were made out to my name, on the back of it. If the checks were made out to "Cash" I wrote the initials "J. S." or sometimes just "J." or sometimes just "S." Downey used the initials "M. D." I could recognize the initials on the checks. Government's Exhibit O-229-12 has my name, "Okay, J. S." on it. The check form is a blank in which you write in the name of the bank. 1184 I kept such blanks at the Horse Shoe for those who did not have their own check book. The "Okay J. S." on Exhibit O-229-11 is mine and also on O-229-12 and also on O-229-10. Government's Exhibits O-229-1 to 9 were not okayed by me. They are made out by the same party who made out the others but I have no way of knowing whether they were cashed at my establishment. The form used does not help me. Everybody around Chicago used that blank form. You can buy them at any stationery store. None of the handwriting on those checks is mine. These checks were cashed at the Lawrence Avenue Currency Exchange. I never cashed checks without endorsing them. I want also to mention that the checks which bear my signature do not indicate that the maker lost that money. I recognize the "M. D." on O-228-19. That is the M. Downey I have mentioned. The check was not cashed at my place. Government's Exhibit O-228-18 bears M. Downey's initials but it was not cashed by me. I don't think O-228-17 was cashed by me. That might be my "J." on the back but I can't say. I cashed Government's Exhibits O-228-4, O-228-5, O-228-5(a), O-228-6, O-228-7, O-228-2 and O-228-13. There is a question about O-228-12. I don't know whether that is my "J. S." No other person had the authority to write "J. S." on a check at the Horse Shoe or at the Dev-Lin. The "M. D." looks like M. Downey's on all of them. The "J. S." on O-228-3 is definitely not mine. I don't remember the year when Anton Moody was at the Dev-Lin. It was about three months in the summertime. My chart shows that I was at

the Dev-Lin from June 15 to September 9, 1937. I think I was operating there at that time. Moody was not there when I was there. Moody was never an employee of mine. I had the same employees at the Dev-Lin as I had at the Horse Shoe, but I would say some new ones. My 1185 Social Security books show who worked for me there.

The Social Security book for 1937 does not have a key sheet in it. I don't know why it is not in here. It should be. Without the key sheet I cannot say what period I was at the Dev-Lin and what period I was at the Horse Shoe. Shorty Barre's sheet shows that he worked from January through June 1937. Here is Harry Becker. He worked from January through August 1937. It is on that basis that I compiled the chart showing that I was open to September 9. I am sure we were operating all through June, July and August, 1937. I would not know whether Moody was there at the Dev-Lin because he could have been there while I was at Kedzie and Lawrence. My employees could be in the Social Security book and be working at the Horse Shoe. This book covers both places. My chart shows that I was at the Dev-Lin from June to September, 1937. Government's Exhibit O-240(a) is a Social Security return for the Dev-Lin Club. It covers the month of July, 1937. It is signed by Anton Moody. Government's Exhibit O-242-2 is a return for August, 1937, for the Dev-Lin Club. I did not file it. I filed the returns for the month of June, July and August. I don't remember whether I filed them monthly or quarterly. Copies of the returns are all here in court. Edward Gates was one of my employees. The records show he worked from January 1 to June 11, 1937. I don't know where he worked after that. If the Horse Shoe remained open with horses in the summer Gates was in charge. I can't remember back in 1937. I remember there were times when the Dev-Lin and the Horse Shoe were both operating at once but I don't know when. I think it happened only once or twice some time between June, 1937, and the present time. It was for only a few days and did not mean much. Sometimes I would move part of the games to the Dev-Lin and leave the Horse Shoe running with horses only a few 1186 days to see how much pressure there was. I cannot fix the year when Anton Moody operated at the Dev-Lin for about three months. When he was operating it was in the afternoon only. He and I were not operating

there at the same time. The Horse Shoe and the Dev-Lin records were kept under one number with the permission of the Government representative. I went to the office of the United States Attorney with my bookkeeper and got the figures out of my Social Security records to prepare the chart. I never filed any separate sheet for the Dev-Lin. The key sheets for 1938 and 1939 will tell exactly the dates. I don't know where the key sheets are for 1937. You have had the books for a year and there must have been a key sheet in the book. I have a sheet here which I found among some papers at home. Government's Exhibit O-241, which is the key sheet for 1937, shows that I closed June 14. It does not show the opening of the Dev-Lin. If I operated the Dev-Lin in the summer of 1937, Moody did not. When Moody had the Dev-Lin it was his place. I don't know anything about his filing. I do know that when the Horse Shoe was closed and I was at the Dev-Lin that I filed for all of my employees. Government's Exhibit O-219 appears to be a check which I endorsed. E. H. Wait is written above my name. The maker is Carl Laemmle. The check is for \$500 and is dated May 12, 1936. I cashed that check for Mr. Wait and gave him the money. I don't know what he did with the money. I also cashed O-220, O-221, O-222, O-223, O-224, O-225 and O-227. I don't think I cashed O-226. Mr. Wait brought those checks in to me when they were due. All of the checks are for \$500 except one which is for \$525. I know nothing about Wait playing roulette with Carl Laemmle at the Drake Hotel. Wait asked me to cash the checks and I did. He paid the fee. He did not tell me anything about the checks and I did not ask him. I was operating the Horse Shoe during May and June, 1936, and I was probably around there. I don't remember whether he came there with the checks. All I know is I cashed them and I know that only because my signature appears on them. I have never met Carl Laemmle and I don't know what Wait did with the proceeds of these checks after I gave the money to him. William Goldstein was my attorney in the Van Spankeren suit. He was the one who was dismissed out of this case and who testified here. Elmer Johnson was there one night. He is the brother of defendant Johnson. I have known William R. Johnson over fifteen years. I have known him well since 1935. I knew him as a gambler before. He used to play

at Harry Block's when I worked there over fifteen years ago. I don't know what brought Mr. Johnson to the Horse Shoe to gamble the first time. Prior to his taking over a table there my business was not large enough to have anyone else take over a table. He was the only man in the gambling field who had the reputation that he bears. He is the only man who ever took over a table at my place. I think the first time I talked to him was when he asked me whether there was any high playing at my place I did not care to handle. I told him there was nothing at that time. Later I called him back and he started banking the game. He never paid for this privilege. He did not pay the employees that were working on the table whenever he took it over. I paid them. I have visited at his farm perhaps a dozen times. I have ridden horseback there twice. My daughter was with me. I never met Creighton out there. I met Mr. Wait out there getting some eggs one day. He is the only defendant I remember seeing out there. I bought eggs and butter at the farm for my home. A few times Johnson sold butter and eggs and chickens to the Horse Shoe restaurant. I think Downey was 1188 going out to the farm and I asked him to bring some back with him.

Q. How many saddle horses did he have out there?

Mr. Thompson: We object to all this as immaterial and as improper cross-examination.

Mr. Plunkett: I have a right to test the witness' memory about it.

Mr. Thompson: You have tested him a lot about everything.

The Court: Do not spend a great deal of time over it. Overruled.

Witness: Four.

I never put Bissell's check, defendants' Exhibit S-30, through for collection. He signed it as a note for his loan. The last time I saw him was when he gave me that check. He won \$1,500 from me more than once and I remember paying him in \$100 bills. When I paid him \$1,500 was not the last time I saw him. We had a little light over the door at the Horse Shoe which flashed. It was a light to let me know when the police were coming. It was not a light to indicate that a bus was waiting to go to the Harlem Stables. There was a bus service at the corner which took Keno players to the Harlem Stables. People

would stand on the sidewalk and wait for the bus. Sometimes they waited in the Horse Shoe restaurant. The light in the gambling room was not to signal bus patrons. The slot machines I operated at the Horse Shoe were my machines. I sold four of them. I think I have two in the warehouse. I made a long distance telephone call from the Casino to Louisville to a fellow who gave me a bad check. I paid Mackay for this call. I visited the Casino a few more times. I have been at the House of Niles just visiting perhaps three or four times. I kept no records of the checks which I cashed for merchants around 1189 Kedzie and Lawrence. When I took checks over to Marcus to cash I kept no record of them. I was at the Lawrence Avenue Currency Exchange nearly every day. I cashed checks there and ordered the kind of money I wanted. Sometimes I would have Downey bring back the cash and sometimes I would go over and get it myself. There was a short time when Bernice Downey came to the Horse Shoe and picked up my checks from the cashier.

(The following proceedings were had out of the presence of the jury:)

Mr. Plunkett: One of defendants' exhibits, S-33, is an indictment against defendant Sommers. We object to the offer on the ground that it is immaterial. We make no objection to the other exhibits.

Mr. Thompson: Our theory of the materiality of this indictment is that the two indictments were returned by the same Grand Jury and undoubtedly on the same evidence. In one of the indictments the return is that Bill Johnson was the owner of the gambling houses and that all the checks cashed and currency exchanged was his income from the Horse Shoe gambling house, whereas in the other indictment the Grand Jury finds that Sommers was the owner of the gambling house and received all the income indicated by the exchanging of currency and cashing of checks by Sommers. They guessed both ways. They try Sommers in this case on the theory that Johnson was the owner. If they don't make that good then they will try Sommers on the theory that he was the owner. This evidence is based on presumption piled on presumption and shows Johnson had a certain income from the houses Sommers operated, whereas, assuming Sommers owned the houses, then the checks cashed and the currency exchanged makes it his income. In one breath the Grand Jury

1190 says that Sommers was on a salary and in the other breath that he had a million dollar income.

Mr. Plunkett: There is no statement in the indictment that defendant Sommers owned any gambling house.

Mr. Thompson: The indictment says income from gambling.

Mr. Riley Campbell: An indictment is not evidence of anything.

Mr. Thompson: It is not evidence against the defendants but it is evidence against the Government as to having a couple of absolutely opposite theories.

Mr. Campbell: The cases don't hold that.

Mr. Thompson: Probably no one ever tried this stunt before and there have been no cases that could pass on it.

Mr. Campbell: It has been done before.

Mr. Thompson: They have offered in evidence income tax returns of defendant Sommers on some theory, I assume on the theory that Sommers was reporting such a low income that he could not have been the owner of a gambling house, a violent assumption because your Honor has carried through the liquidation of two or three railroads that had a very large business but no profits.

The Court: The objection will be sustained. You say there is no objection to the other exhibits.

Mr. Plunkett: With the exception of this chart which now has been demonstrated—

Mr. Thompson: We haven't offered the chart.

Mr. Plunkett: It is being shown to the jury five hours a day. Whether it has been offered or not makes very little difference.

Mr. Thompson: So you were showing your chart with buttons to the jury for four weeks.

Mr. Plunkett: That was in evidence.

Mr. Thompson: It was in evidence the last day.

Mr. Plunkett: The map was in evidence when it was first put up.

1191 The Court: If the chart is not offered and you ask that it be taken down it will be taken down.

Mr. Thompson: If the Court please, we propose to ask Mr. Sommers some more questions on redirect and clarify the record. Mr. Sommers has not said he knows nothing about it.

The Court: Take it down until you offer it in evidence.

Mr. Thompson: Well, I want to ask Mr. Sommers about it.

The Court: Take it down.

Further Cross-Examination by Mr. Plunkett.

I know John W. Geary, also known as Bud. He worked for me. I do not remember how long he worked at the Horse Shoe. He might have worked as a shill or a floor man or a dealer. The record for 1937 shows that he worked from March 5 to July 17, 1937, as a cashier in the horse book. I don't think he worked for me before March 5, 1937. He could have been working for me at the Dev-Lin or at the Horse Shoe during that period. The book does not separate them. He did not work for me in 1938 or in 1939. He is the Bud Geary who worked at the Bon-Air and sent down the cash for Ed Wendt. I called Geary and asked him to send the cash down and he said that Wendt had left him that instruction. Wendt owed me \$700 at that time. It was not a gambling loss. It was a loan. I have known Barney McGrath for ten or twelve years. He worked for me as a box man and a floor man at the Dev-Lin and the Horse Shoe. I cannot recollect the dates. I have never seen McGrath at the D. & D. I opened the Anchor Sandwich Shop about 1926 and ran it five or six years. I had telephone service there all the time but I don't know whether I surrendered it when I sold out. I sold it to Tom Barnes but I do not recollect the date. It is not very 1192 easy sitting here remembering dates for three days.

Redirect Examination by Mr. Thompson.

The receipts and other papers which I was asked about and which were delivered to your office were here in the courtroom and they are here now. I don't know where all of the checks that were shown to me and which do not bear my name or initials came from nor do I know who cashed them. These checks were shown to me by the Government and they were in their possession. I don't know to whom these checks were delivered after they were cashed. Government's Exhibits R-35, R-36, R-37 and R-38 were signed by me in blank and delivered to Brantman. At no time did I see any of the figures put on them. I never saw the notary public whose signature and seal appear there. I signed the blank and never swore to the return. Brantman filled out the return and sent me a copy and filed the original and paid the tax. I don't know the Morgan referred to in testimony here. I heard O'Neill testify about

delivering merchandise to Morgan. I received none of these supplies from Morgan. I never received any supplies for my horse book or my gambling houses from the building at Milwaukee and Irving Park. I bought service from Mr. Flanagan,—information pertaining to horse races. I laid off bets with him which is the same as hedging in the market. If I had too much money on a horse I would call Mr. Flanagan and give him part of the bet. I would also give him my daily doubles. After the races were over, I or the man in charge of the office would call Flanagan and check results with him. My book manager would carry over to Flanagan's office the hard cards and the four or five sheets and whatever money I owed Flanagan. There were evenings when he would not go 1193 because I had no business with him that day. The service money would be sent over on the next trip. If a man bet \$50 to win on a horse and the horse was 10 to 1, I did not want to risk \$500 so I might lay off half of that bet with Mr. Flanagan. Flanagan might lay off part of the bet with someone else. I did not know what he did. Daily doubles are made before the first race is run. Flanagan took all of these bets. That was part of his service. They were phoned in to him before the first race. A daily double is picking the winner in the first and second races. A win might run into a lot of money. The daily double business was not profitable to me but Mr. Flanagan wanted the business. The one-way service furnished by Flanagan terminated in my horse book through an amplifier through which was announced all information pertaining to the horse race. This information was brought in to my place over this one-way telephone line and broadcast through the whole room. The two-way service was like any other phone. I would pick up my phone and he would answer or he could ring me. There was gambling at the Bon-Air in the summer of 1939 but I don't know of any gambling there at any other time. I visited gambling houses operated by these defendants. Percentages on a dice game vary according to the propositions one bets.

The Court: What is the percentage against a player on an American roulette wheel?

A. Five and five-nineteenths.

I have a dice lay-out here and I can explain the whole dice table if the Court would like to see it. I did not think this was a gambling case. The dice lay-out is a cloth with

numerals written on it telling the different plays that can be made. Straight dice have a little over one per cent 1194 in favor of the house. The whole lay-out, considering all the propositions, would give approximately two per cent in favor of the house.

The Court: Take an American roulette wheel and figure out the percentage.

The Witness: I could not do that right now but I know it is exactly five and five-nineteenths.

The Court: Figure it out for us.

The Witness: I could not do that right now. I probably could this afternoon just by refreshing my mind.

The Court: How many figures are on an American roulette wheel?

A. The numbers run from 1 to 35.

The Court: How many blanks?

A. There is one 0 and a 00.

The Court: And if the players win it runs from 1 to 35, is that it?

A. That is right.

The Court: If it stops on 0 or double 00?

A. If you bet 0 or 00 and if it stops there you win.

The Court: Suppose I am a player playing on 0 or 00 and it stops somewhere else?

A. You lose.

The Court: Suppose I bet on the red.

A. You would get paid if the red shows, that is, if the ball falls in the red compartment.

The Court: How many numbers are there?

A. They are equal,—red and black.

The Court: How many reds? How many blacks?

A. Eighteen black and eighteen red and two greens,—the 0 and 00.

The Court: Well, how many places are there?

1195 A. Thirty-six red and black and the 0 and 00.

The Court: Of the thirty-six half are black?

A. That is right.

The Court: If I bet on the red and the green shows, what happens?

A. You lose. If you bet on the black and the red shows, you lose.

The Court: How many chances do I have to win if I bet on the red?

A. You have just as many chances to win as you have to lose, with exception of the greens.

The Court: I have eighteen chances on the wheel that has thirty-six numbers?

A. That is right.

The Court: How many chances does the house have to win?

A. I have the green in my favor.

The Court: So the house would have twenty chances to my eighteen.

A. That is right, but the percentage on the wheel is not—

The Court: Well, how do you figure that percentage?

A. I will figure it later on. I will be glad to later on.

The Court: I would like to have the opinion of an expert.

A. That percentage is five and five-nineteenths.

The Court: I would like to know that.

A. That is the percentage.

The Court: Proceed.

Mr. Thompson: Well, can you tell us for the information of the Court and perhaps some of the jurors, what the percentage is in favor of the house in a dice game? What are the things in a dice game that makes the percentage in favor of the house?

The Witness: Well, the biggest percentage is on the Don't Pass. For example, if your Honor was betting the

Don't Pass, and two aces would show, I can collect on 1196 the two aces. In other words, I would take bets on either the Do or Don't Pass and if you are betting the Don't and the two aces show, you will not collect. It would be a stand-off.

Defendants' Exhibit S-36 contains a pair of my red dice with my monogram on them and also a pair of my white dice with my monogram. The monogram on these is "Horse Shoe 1939". No one has such a mark but me. It was the privilege of any player or any spectator to pick up a pair of dice from the table and walk out with them. As many as fifty or seventy-five pair of dice a day have been carried out.

Yesterday I made a few mistakes with respect to dates and I should like to correct them. After refreshing my recollection, I remember that Mr. Moody was running the horse book at the Dev-Lin in the daytime and I was there at night, as my Social Security records show. Defendants' Exhibits S-34 and S-35 refresh my recollection as to my operations at the Dev-Lin in the summer of 1937. My payroll payment for that period was half the usual amount.

These two receipts are for July and August, 1937, and they were with the rest of the receipts and papers which Mr. Plunkett showed me yesterday but I was not able to find them on the stand. Columns 1 and 2 on the chart are accurate representations of the opening and closing dates of the Horse Shoe and the Dev-Lin in 1936, 1937, 1938 and 1939. I read the transcript last night and found I was confused as to other dates. I was at the Lincoln Tavern in December, 1936, and June, 1937, as I stated on my direct examination. Those are the correct dates.

1197 Mr. Thompson: In addition to our other offers, we offer in evidence DEFENDANT'S EXHIBIT S-36, and columns 1 and 2 of the chart, which are the columns headed "Horse Shoe" and "Dev-Lin."

Mr. Plunkett: We have no objection to these exhibits.

The Court: No objection to any exhibit except the one I ruled on?

Mr. Plunkett: Yes.

The Court: They may be received.

Recross-Examination by Mr. Plunkett.

Defendants' Exhibit S-36 are dice of the Horse Shoe. I used to have another insignia on the deuce side. The horse shoe around the ace and the figure 1939 is a new design. I changed it because I liked it better. I used the mark on the deuce side for a long time. I have red and white dice because some people like one and some the other. At other places they use green. They cost about the same. I think the red is a little more expensive. Other houses may have changed their emblems in 1939. Changing the emblem made no difference in the way the dice rolled. I just changed them because I wanted to. The dice you show me have various marks,—one is "9730," one "D and D," one "Lincoln." Here is one with my old "Horse Shoe" mark. I used Horse Shoe dice at the Dev-Lin and the Lincoln Tavern. The dice you have shown me are all the same except the markings. I think I changed my marking before 1939. I think the dice you have are old dice. I closed up last September. I don't know who else closed then, but I know a lot of houses are open right now. I said yesterday that I swore to my income tax returns but I was mistaken.

They were made out as I explained this morning.
1198 The man in charge of my horse book bought the supplies. Some of them were bought at the Entry Service.

I have brought no records into court showing that I bought boys from the Entry Service. The bill I have put in evidence shows wall sheets. I did not buy the boys which show jockeys' names over at 4715 Irving Park. I had no number on the wire circuit. I was identified by my name or the name of my book manager. It was Gates' duty to pay for the service. I was never at the Service Bureau. I never went upstairs when I was visiting at the Casino. I think it was located there then. I don't think I ever met Flanagan at the Casino. I don't think I met him to do business with him. I saw him at different times at the theater or a football game or hockey game or prize fights and I had dinner with him a few times. Skinny Moss was the man who broadcast the race news. Eddie Gates was the man in charge of my horse book. I had no occasion to keep records between myself and Flanagan. Had I known I was going to be here I would have had a basket full of them. I brought into court such papers as I could find to defend myself. Papers I found which I did not think would be of interest to anyone I did not bring in. There was no sense in a bill showing that I had bought a mop. I don't think I have any bills now showing that I bought a mop. I threw them away but I can bring in the people who sold me mops. I gave you their names. I was confused when I said that Moody never operated at the Dev-Lin during the same period. He was running the horse book in the daytime which closed at 6 o'clock and I was running the side games at the Dev-Lin in the evening which opened at 8 o'clock. When Mr. Moody paid Social Security under the name Dev-Lin for the period he was there, that was the only time it was so paid. I could not file differently after he filed under the Dev-Lin than I had done before. I never took care of the details for 1199 all of the places. I have accommodated a lot of people. These other defendants were not rivals of mine.

Redirect Examination by Mr. Thompson.

During the period I had the Dev-Lin there were other people than Mr. Moody who occupied it part of the time. The Village of Lincolnwood used to run affairs there. Scotty Krier used to run Morton Grove Day there. When I was not using the place I would let other people have it. Mr. Moody did not have any interest or any connection with any gambling house operation I was running. I had no interest or connection with the book Moody was operating

in the afternoon. Mr. Hartigan's place was at 4701 North Kedzie, corner of Leland and Kedzie. I never operated at that number. I had no relation with Mr. Hartigan when he operated it. Thomas Barnes preceded Mr. Hartigan at that address. The place was vacant after Mr. Hartigan gave it up. Mr. Hartigan never operated at 4721 North Kedzie, first or second floor. He had no connection financially or otherwise with me in the operation of the business at 4721 North Kedzie. I succeeded Thomas Barnes there. When I moved into the second floor the first floor was occupied by a real estate office. I opened up the restaurant later.

Recross-Examination by Mr. Plunkett.

I don't remember the year when Mr. Hartigan ran the restaurant at 4701 North Kedzie. I don't think it was the first year I ran the Horse Shoe. Mr. Hartigan was in a different building than I was. There was no connection between the restaurant on the corner and the Horse Shoe 1200 gambling house. There could have been a phone extension from Hartigan's restaurant to the Horse Shoe gambling rooms but I would not know about it. It may be your contention that Hartigan and I were running the Horse Shoe for Bill Johnson but that is not so. I can remember dates as well as anyone but I cannot sit here for three days and remember them.

H. W. MEYER, being first duly sworn, testified as follows:

Direct Examination by Mr. Hess.

I am a contractor. My office is at 7212 Circle Avenue, Forest Park. I have known Andrew J. Creighton for two and a half years. We rented him space in our building. Defendant's Exhibit C-1 is the lease which bears Mr. Creighton's signature and mine. Mr. Creighton operated the Select Club there which was a horse book. He has been in possession since the date of the lease. We also erected a building for Mr. Creighton in Maywood. It was about three blocks south of Madison Street and one block east of First Avenue. It was the Proviso Club, a building about 50 by 100 feet, one story. Mr. Creighton contracted for the building and paid for it. This was in 1939. Mr. Creighton

has paid rent under his lease for the Select Club. He made payments at our office.

Mr. Hess: We offer in evidence Defendant's Exhibit C-1.

Cross-Examination by Mr. Hurley.

I live at 621 Balfour Avenue, Oak Park. Our company is Meyer & Stelzer Company. We leased the first floor at 7212 Circle Avenue, Forest Park, to Mr. Creighton and we occupied the second floor. Mr. Creighton occupied the 1201 premises from May or June, 1937, until about a year ago when he was closed up. Occasionally Fred Gitzen paid the rent. I know Murdock McKenzie. He was the manager of the Select Club. Sometimes he paid the rent. I have not seen him for three or four months. I don't know where he is now. The last I saw him was when he called at our office and asked whether there was any mail. Occasionally we received mail there for these men. When Creighton rented the space he told us he wanted to use it for a horse book. Mr. Creighton made some improvements before he moved in. Our firm did the work and he paid for it. It was in the neighborhood of \$1,500. The Proviso Club is at the corner of Orchard and some other street in Maywood. We erected a building there for Mr. Creighton. I did not look up to see who was the owner of the property. The building was erected early in 1939. There was still frost in the ground when we started. I think there were three 50-foot lots, approximately 125 feet deep. The building was cement block construction about 50 by 100, one story high.

The Court: DEFENDANT'S EXHIBIT C-1 may be received.

CHARLES A. PFINGSTEN, being first duly sworn, testified as follows:

Direct Examination by Mr. Hess.

I am in the real estate business. My office is at 11 South LaSalle Street. I know the defendant Andrew J. Creighton since the latter part of 1932. We were the managers and agents of the building at 6245 Cottage Grove Avenue and we leased the entire second floor of that building to Mr. Creighton late in 1932 or early in 1933. We continued

to manage the building until October 1, 1939. Mr. 1202 Creighton entered into possession of the premises and renewed the lease from year to year and paid us the rent very month. He gradually took on more space, adding a third floor and the rear part of the first floor of the building. The entrance to the first floor was through 6243 and the entrance to the building was 6245. It is a three-story and basement building with four stores on the ground floor. Up to the time I ceased managing the building Mr. Creighton was a tenant there all the time.

Cross-Examination by Mr. Hurley.

Our lease with Mr. Creighton was renewed every year. We do not have copies of the leases. When we gave up the management in October, 1939, we destroyed all the old leases. C. Wallace Johnson succeeded us as manager of the building. I turned over to him the current lease which expired in 1940. At the time I gave up the management of the building it was occupied by Mr. Creighton. When I was last in Mr. Creighton's rooms about September 15, 1939, there was equipment and furniture there. Mr. Creighton did not say anything to me about closing up. His space on the second floor was about 7,500 square feet. I do not remember whether I inquired of Mr. Creighton what business he proposed to conduct in the building. That was seven or eight years ago. We were glad to rent the space and I don't think I made any investigation of his business. The place had been standing idle for a long, long time. I might have had a general idea about the man to whom I leased the space but I do not recall that idea at this time. I made no investigation of Mr. Creighton.

I know he put up \$275 to secure his lease. I did not 1203 know that he had been at 4020 Ogden just before that.

Redirect Examination by Mr. Hess.

In the summer of 1939 I contacted Mr. Creighton once at 90 something Western Avenue to collect the rent for the Southland Club. He gave me \$550 and I gave him a receipt.

Recross Examination by Mr. Hurley.

Southwest Properties, Incorporated, own the Cottage Grove Avenue building. The president of the corporation is Percy Cowan who has an office at 39 South La Salle

Street. I believe Greenebaum Investment Company have some interest in the property. I know there was originally a bond issue on it.

The Court: What was the monthly rent when you first rented it?

A. Two hundred seventy-five dollars a month.

The Court: Did that increase?

A. It increased up to \$550 a month after he took additional space.

Mr. Hurley: How long did he pay you \$550 a month?

A. I think during the years 1936, 1937, 1938 and 1939. The rent was \$275 originally and increased after he took space on the third floor to \$350. Then space on the first floor brought it to \$400, and as he came to occupy most of the building it was \$550.

The Court: Was there any indemnity of any kind to the property owner against losses through gambling on the premises?

A. I don't think so.

The Court: What?

A. The only indemnity we had was landlord's or tenant's public liability in case anyone was hurt.

1204 The Court: If anyone got hurt with a load of coal or anything like that?

A. That is right.

The Court: You were not protected against gambling liability on the premises?

A. No, sir.

The Court: Could you get anything of that kind?

A. I don't think there is any insurance like that.

The Court: Did you have any indemnity of any kind to protect the owner?

A. Only personal injury.

The Court: Did Mr. Cowan know what these premises were being used for?

A. I assume he did.

The Court: Did you talk to him about it?

A. I did at the time I submitted the lease.

The Court: Did you tell him what they were going to do?

A. I told him what I thought.

The Court: What did you tell him?

A. I thought this was going to be used for a social club; that was my thought in the beginning.

The Court: What kind of a social club did you think they were going to use it for?

A. When they came in they said they were going to use it for a social and political club.

The Court: What kind of a social and political club?

A. I don't know.

Mr. Creighton was brought to me by a real estate broker. I don't remember his name. I destroyed the records of our corporation when it was dissolved because I had reduced my office force. We gave up our management business. I turned over the current lease to Mr. C. Wallace Johnson and I destroyed the rest of them because we had no more use for them.

RAYMOND E. PARKER, being first duly sworn, testified as follows:

Direct Examination by Mr. Hess.

I reside at 7719 Yates Avenue. I am a paper merchant. In 1936 I was on the road as a salesman. I have known Andrew J. Creighton for six or seven years. I executed a lease with him for certain property in 1934. This was 5317-23 Lake Park Avenue. I was operating a garage there for my father's estate. Mr. Creighton was there over five years. He operated a horse book there. He paid the rent to me as administrator from May 1, 1934, until the second lease terminated.

Cross-Examination by Mr. Hurley.

I have a copy of the second lease with Mr. Creighton. It covered a period of two years which would bring it down to April 30, 1941. I was appointed administrator March 16, 1933. I was operating under the supervision of the Probate Court. Mr. Creighton used part of the premises as a garage and the balance as a club. I did not ask him what kind of a club. When he came to talk to me he said he was looking for space for a club room. It was my understanding it was a recreation club. He came by himself. We agreed on \$375 a month rent. He paid \$375 a month from May 1, 1934, to April 30, 1939. Under the second lease the rent was reduced to \$200 a month. Business conditions warranted the reduction. Mr. Creighton asked that the rent be reduced. Shortly after I rented the premises I found out what sort of club was being operated there.

Mr. Hess: I wish to note an objection to this type of cross-examination. It is not cross-examination on what I presented on direct.

Mr. Hurley: I have a right to find out what this property is he is leasing to this man. He has not offered any lease. I want to see what the property is, what was there. This man says he was operating as an administrator.

The Court: Suppose you show what was operated there. Overruled.

The Witness: I saw a counter and some chairs in the place.

Q. How many chairs?

Mr. Hess: I object to this detailed examination as to the contents of the premises.

The Court: Is there any dispute about what it was?

Mr. Hess: No. If they want to know, we concede Mr. Creighton was operating a bookie in the premises.

Mr. Hurley: He said a club. We are not so clear what was there.

The Witness: I never saw any dice games there. I collected my rent from Mr. Creighton at the Club Southland. From about the middle of the summer up to November I worked for defendant Creighton at 53rd Street. During that period I was in the property every day. I was a sheet writer in the horse book. I never worked in the place at night. I worked for Creighton at the Club Southland for a period of about thirty days as a sheet writer. Mr. Creighton was the man I worked for. Bill Foley was in charge of the book. I also worked for Creighton at 9730 South Western Avenue, from June to September, 1939, as a sheet writer. The last rent I collected for the Lake Park Avenue place was in May, 1939,

when I ceased to have any interest in the premises. 1207 I am now working for Household Paper Products

Company. The Lake Park Avenue property was taken from us by foreclosure proceedings in May, 1939. A receiver was appointed.

JOHN BUTLER, being first duly sworn, testified as follows:

Direct Examination by Mr. Hess.

I reside at 5825 Campbell Avenue. I am an accountant. I have worked for Andred J. Creighton since 1936 keeping his payroll and Social Security records and performing some other duties. Mr. Creighton employed me and furnished me the names of the employees of the Southland Club, the 9730 Club, the Lake Park Club, the 406 Club, the Select Club, the Club Proviso, and the 11901 Club. I kept some of the records personally and the others were kept under my supervision and direction. There was a constant change in employees. I got my instructions to add or remove names from the payroll from Mr. Creighton. Mr. Creighton gave me the information with respect to the rate of pay and he turned over to me the employer's Social Security payments. We kept the Social Security collections in a separate account and at the end of the month or the quarter we compiled reports and drew checks to make our payments. As a general proposition the Club Southland, Club Western and Club 11901 did not operate at the same time. I worked at whichever one operated. I worked in the clearing house on the third floor in the Club Southland. This served Mr. Creighton's various horse books. I took and gave messages on betting, etc. This clearing house was a small office 1208 about 20 by 30 feet and contained a table on which were switchboards, drop lines and pick-up phones. Mr. Creighton gave all directions with respect to operation of this clearing house and his clubs. Bets were laid off from the clearing house. Mr. Creighton would call out and lay off bets with others and others would call in and lay off bets with Mr. Creighton.

Cross-Examination by Mr. Hurley.

There were about six or seven trunk lines and perhaps a half dozen drop lines or pick-up phones on the third floor. There were three or four others working up there. Bill Foley who operated Mr. Creighton's Lake Park Club would come in. Al Kalus, who also operated a book for Mr. Creighton, was up there part of the time. Others who operated books for Mr. Creighton were John Drumm

and Louis Lynch. The private lines ran from the clearing house on the third floor to the Southland Club on the second floor, to the Lake Park Club, the 406 Club and the other Creighton clubs. There was no line running to 2141 South Crawford or 4715 Irving Park while I was there. We got our broadcasting service from Nationwide and another place which I do not recall. I don't know Skinny Moss. I knew a Lester Moss. He was a wheel dealer. The books for the Club Southland, the 9730 Club and the 11901 Club are in my handwriting. Books for the other clubs were kept by different persons. Employees were paid daily in currency. Various employees got different pay, from \$2 a day for the porters to \$15 for the floor men. I testified before the Grand Jury one day. I don't remember whether it was January 30, 1940. At that time I did not tell about doing any of this telephone work. I don't believe anyone asked me about it. I 1209 don't recall answering "No" to the question, "Aside from preparing those Social Security returns have you done anything else for him?" Nor do I recall saying that the only work I did for Mr. Creighton was on the Social Security records. It is possible that I said I never assisted around any of the gambling houses. I never worked at any of the games in the gambling houses. I said before the Grand Jury that anyone who happened to be near a telephone answered it. I don't recall anything being said before the Grand Jury about this third floor telephone service that I have testified about.

Redirect Examination by Mr. Hess.

I think Mr. Creighton had employed in his clubs in round figures about 200 employees on the average.

ANDREW J. CREIGHTON, being first duly sworn, testified as follows:

Direct Examination by Mr. Hess.

I reside at 4921 West Jackson Boulevard. I am one of the defendants. I am a book-maker and gambler and have been in the business for more than twenty years. I have operated the Club Southland since 1933. The other clubs mentioned were opened after that date. Prior to the open-

ing of the Club Southland I had operated at 215 South Halsted Street for about four years and about that time I had another place at 1800 West Madison Street. I closed these clubs and about a year later I opened the Southland. I made a lease with Charles Pfingsten in the latter part of 1932 and then opened a horse book on the second floor. Later I acquired space on the third floor and then in the rear of some stores on the first floor. When I was 1210 chased out of the second floor I used to operate in these spots. In the Club Southland on the second floor I had various gambling games,—roulette, blackjack, poker. I had a wire office on the third floor which was established about two and a half years ago. I cleared bets through there for my books and took their lay-offs. It was called a clearing house. I used the balance of the third floor for storage. I think I opened the Lake Park Club in 1934. It was a horse book only. I operated the Select Club in Forest Park. I rented space from Meyer & Stelzer and prior to that I operated next door over a saloon, beginning some time in 1936. This was a horse book only. I operated the Club Proviso in Maywood in my own property. It was a horse book. When I was closed in Forest Park I moved there. It only operated a few months in 1939. I moved the Club Southland out to Vincennes and 119th a couple of times when the Club Southland was closed. I had a little book behind a saloon at 406 East 63rd Street. I operated the Club Western at 97th and Western. There I had various gambling games,—dice, roulette, poker and horses. I rented the premises from Mr. Goldstein. No other person was financially interested with me in the operation of any of my places. I was liable for expenses of all these places. I hired and discharged the help, fixed their pay and duties. I was never under any obligation to divide profits with any person whomsoever and I did not divide the profits from any of these gambling parlors nor did I ever promise to do so. I cashed checks at the Mid-City National Bank. Some of these checks were from my business and some were for other business men in the neighborhood. They did not represent profits from my business. I cashed checks at the Washington Park Currency Exchange. These were checks which I had cashed for patrons. They might or might not represent losses. They did not represent profits from my business. I cashed some checks at the Lawrence

Avenue Currency Exchange. Jimmie Hartigan asked me whether I could send him a little business. I had no interest in this exchange and I was charged a service fee for such checks as I cashed. These checks did not necessarily represent losses by patrons nor did they represent profits from my business. I recall Blake whose checks are in evidence. He is in the monument business and I know him very well. I frequently cashed checks for him. He gambled at the Club Southland, Club Western, and at 119th and Vincennes over a period of four or five years. Mr. Blake's checks received in evidence do not represent his losses. He made large winnings. I remember one time he won \$3,000 and I sent a messenger home with him. He was paid in \$100 bills. We used \$100 bills in making cash-outs above \$100. The patrons want large bills. I remember cashing some checks for Bissell at Club Southland. I don't know whether Government's Exhibits X-202 and X-207 represent gambling losses of Mr. Bissell. Martin Jerome O'Leary worked for me as a shill and later as a dealer at the Club Southland and the Club Western. I did not maintain a school for shills but I did allow some of my experienced help to teach some of the new help. They would come down maybe an hour early and I would have a check dealer or stick man instruct them. This so-called school was operated only when some of the shills would ask for it. It was not open to the public. It was only for my employees. I know a McGlynn who used to work for me. He worked around at several of my places. I laid him off. When he wanted his job back I did not say to him, "What can I do about it. I am only working here," or anything to that effect. I merely told him that so many of my small books were closed that I could not give him employment. I owned all of the places I operated. 1212 The Autovent Company for which Mr. Schafer worked did several jobs for me installing fans or ventilating systems. I made the contracts and paid for the work and no one gave me any orders about it. I saw John Hayes on the witness stand but I never saw him before. I heard him say that he saw me working at 4020 Ogden in 1931 or 1932 but I never worked there. At that time I was in business on Halsted Street. In those days I visited 4020 Ogden very frequently playing faro bank in the evenings as a patron. I never worked at the 4020 Club in any capacity and I never had any interest in the

club. I changed my locations frequently. When the Southland closed I used to open at 119th and Vincennes and I would employ bus service to take my patrons out there. Mr. Thibert furnished service for three or four months. He had large busses and would make three or four trips in the daytime and three or four at night. Each trip averaged about \$5. Mr. Thibert solicited me for this business and told me that Mr. Sommers had authorized him to use his name. He said he had done some work for Mr. Sommers or something to that effect. I paid for this bus service. I do not recall Earl G. Smith. I would have ten or fifteen shills working for me at once. I knew my help pretty well but sometimes I did not know their names. I cannot place Earl Smith. I believe it was between June and August, 1939, that I cashed checks at the Washington Park Currency Exchange. I closed the Club Western about September. I came back to the Club Southland and operated horses there for fifteen or twenty days in October, 1939. I was not operating any of my clubs in November and December. I might have cashed \$15,000 or \$20,000 in checks at Washington Park over all the period I did business with them. I sometimes cashed checks for them and I would send persons to the exchange with my okay on their checks. When I cashed checks for the currency exchange they would later pick them up and return my cash. I had a loud speaker service in all my horse books. I got the service from two sources and had both services in some of my places. I had service from John Flanagan and also from Nationwide. Where I had both services I could throw a switch and take either service. The Flanagan service gave a better line on the horses. He gave us various kinds of information tipping us off to police activities and also on horses that were carrying a lot of money. Flanagan also took our daily doubles and we had a lay-off privilege with Flanagan which we could take advantage of if we got heavy on a horse. I usually handled my lay-offs with my different houses but sometimes we laid off with Flanagan. It is not possible to operate a horse book without service like that which I got from Nationwide or Flanagan. I had two wires with the Flanagan service. The one-way terminated in a loud speaker in my rooms and carried information on the horse races. The two-way wire was one we used to phone in the daily doubles, lay-off or hedging of different bets, and so

on. All I know about the Flanagan service is that I bought it and paid for it. I know nothing about how Flanagan operated his business or where he got his service. In operating my seven places I bought all of my supplies, including scratch sheets, envelopes, pads, pencils, boys, etc., from different supply houses. I never knew a man named Morgan who has been mentioned here and I never bought any supplies from him. I never bought any supplies from any person at a building at Milwaukee and Cicero. I know nothing about the supplies sold there by Mr. O'Neill and I never got any of those supplies. I fixed the wages, the hours and duties of my employees. I had floor men who worked under me at my various places. None of the defendants on trial were ever in charge of any 1214 of my places. They had nothing to do with the operation of my places. On an average I would have about seventy-five employees in the afternoon and seventy-five at night at the Club Southland; at Lake Park maybe ten or twelve. When I operated at 97th and Western or at 119th and Vincennes I had about the same as I had at the Southland but they did not work as steadily. These three clubs are the only ones where I had the general gambling games. The rest were all horse books with few employees. The chart marked defendants' Exhibit C-3 shows the periods when the various clubs operated by me were open. I have known William R. Johnson for perhaps twenty-five years. He never had any proprietary interest in any of the gambling houses I operated. I never operated any gambling house for his benefit and I never paid him any of my profits, nor do I owe him any of these profits. Mr. Johnson came frequently to the Club Southland but he never visited any of my other places to my knowledge. I think the last time he was at the Club Southland was in 1937. Sometimes I used to call him to take over a dice table when the game would get too big for me to handle. I do not recall his coming to my place when I did not call him. When he took over a table I would check it to him and charge him for the money and the checks on the table and from then on the table belonged to him and I had nothing to do with it. If there were any profits they were his and if there were losses he stood them. When Mr. Johnson left he would check the table back to me. If it was short he would make up the shortage to me. I would never know what the result of his playing had been. During all the years 1936, 1937,

1938 and 1939 I knew nothing about William R. Johnson's income tax returns. I did not know whether he filed 1215 returns. I had no conversation with him on the subject. I knew nothing about his personal financial affairs. I never knowingly aided him in any way in an attempt to evade payment of taxes. I do not know whether he ever attempted to evade taxes. I never had any conversation with him about an alleged attempt to evade taxes. I never worked for Mr. Johnson and I never had any conversation with him with respect to the manner in which I should operate my gambling houses. He never gave me any directions about the operation of my clubs and never asked me anything about whether I was operating at a profit. I never delivered any money to William Goldstein for William R. Johnson in connection with the purchase of the Western Avenue property. I spent about \$6,000 putting that property into shape for my gambling club. In August, 1935, I testified before the Grand Jury in the Skidmore income tax investigation and I was interrogated with respect to my ownership of gambling houses. I also was interrogated about cashing checks.

Q. When was it you appeared before the Grand Jury in 1940?

A. I believe it was in February.

Mr. Hurley: I object to that. I move to strike the answer.

The Court: Sustained. Strike it out.

Q. Did you have a conversation with anyone connected with the Government with respect to the ownership of these gambling parlors some time in the month of February, 1940?

A. Yes.

Mr. Hurley: I object to that.

The Court: What relevancy do you contend that has?

Mr. Hess: Well, I am asking questions preliminary to making the same offer of the indictment that you overruled before, but I can't just come out and ask him whether he was indicted.

The Court: I am going to sustain it. Don't ask 1216 questions that are irrelevant.

Mr. Hess: All right, but I am leading up to it.

The Court: Just make your offer. You know how I am going to rule, so just make your offer.

Q. Mr. Creighton, I show you defendants' Exhibit C-2

for identification and ask you whether you ever saw this document before.

A. Yes.

Q. When was the first time you saw the document?

Mr. Hurley: I object to this, if the Court please.

The Court: Sustained.

Mr. Hess: I asked him when he saw it.

The Court: What is the relevancy?

Mr. Hess: I have not offered it yet.

The Court: If it is not relevant, it does not make a particle of difference when he saw it. Objection sustained.

Mr. Hess: Where did you secure the document?

Mr. Hurley: I object.

The Court: Sustained. If you gentlemen would make some objections we would proceed in an orderly manner.

Mr. Hess: I want to make an offer of proof. Your Honor, if you want to exclude the jury.

The Court: Step into the jury room, ladies and gentlemen.

(The following proceedings were held out of the presence of the jury.)

Mr. Hess: The offer which I wish to make is to the effect that the witness had appeared before the Grand Jury and gave testimony on the subject of the ownership of these gambling houses and that he was at that time informed that unless he testified that they were places of William R. Johnson he would be indicted in connection with the income tax matters, and that subsequent thereto he was indicted.

1217 The Court: Who, do you propose to show, told him he would be indicted? Proceed right now to ask the questions in the record. Make a note in your book where this is, Mr. Reporter, so that you can refer to it.

The Witness: I appeared before the Grand Jury in the early part of 1940 with respect to income tax investigations and was questioned about the ownership of gambling places. I had a talk with Riley Campbell about my testimony. It was in his office just about the time I went before the Grand Jury. I believe it was February, 1940. According to the punches on my subpoena card I think it was February 5. Jimmie Hartigan and Jack Sommers were also present. Riley Campbell told me that if I did not tell him that Bill Johnson owned these places I operated that he would indict

me on my income tax for cashing checks and exchanging currency. I told him that I owned any place that I operated. After this conversation I was indicted.

Cross-Examination by E. Riley Campbell.

This conversation was about ten o'clock in the morning. If it was not in February it was in January this year. I can only fix the date by the punches in my card. I was here in the building on January 3 and February 5 and February 13. It was on one of those occasions. Mr. Sommers and Mr. Hartigan and you were also present. Mr. Plunkett was in your office earlier. I was questioned about different things while he was there. When Mr. Plunkett went out just the four of us were left and then this conversation with you which I have related occurred. It lasted three or four minutes. You told me in front of Hartigan and Sommers, "All of you fellows have been coming down here and telling me a lot of lies. If you don't tell me that Johnson owns 1218 those places that you are operating, I am going to indict you for the cashing of checks and exchanging of currency." That is part of what you said. I don't remember the words exactly. I went before the Grand Jury and testified. Nothing was said before the Grand Jury about indicting me if I did not testify to a certain state of facts. I don't know what appears in the Grand Jury record. I did not know in 1939 that Johnson had any interest in the Western Avenue property. I told the Grand Jury I knew nothing about it. I remember talking with you alone in your office in January or February, 1940. I do not remember Mr. Stains being present when you questioned me. You have talked to me in the presence of Mr. Miller and Mr. Plunkett on several occasions. There was a stenographer out in front of your office. I think Mr. Stains was out there one morning when I came down there. I asked for you and he went in and told you I was there and he brought me into your room and then left. It might have been in February, 1940, when I brought my Social Security records before the Grand Jury. They were brought before the Grand Jury after the threat was made by you. I do not remember all of the conversation. The threat stands out in my mind.

The Court: On the basis of the testimony of this witness since the jury has retired, you offer what?

Mr. Hess: I offer EXHIBIT C-2, a copy of the indictment.

The Court: What indictment?

Mr. Hess: The indictment returned against Mr. Creighton charging him with evading or attempting to evade a lot of taxes on income from gambling operations.

The Court: Now what is your theory?

Mr. Hess: This has a tendency to show that the Government has charged that this man owes income tax because he owned and operated these places, a point which is in issue in the case now on trial.

The Court: Your point is that the testimony of the witness on the stand indicates that Mr. Riley Campbell told him that if he did not testify that these various gambling houses belonged to Mr. Johnson, the Grand Jury would indict him as the owner thereof for failure to pay income tax arising therefrom. Is that it?

Mr. Hess: That is what his testimony was.

The Court: And that subsequently he was indicted.

Mr. Hess: For that.

The Court: Because he was the owner, it was claimed, of the gambling houses, but he did not pay the tax on the income that came to him as owner. Is that it?

Mr. Hess: That is it.

The Court: Even granting everything the witness said was true, I can't follow you in that argument. I don't see any materiality. The objection is sustained.

Mr. Hess: I offer in evidence EXHIBIT C-3.

(In the presence of the jury):

Cross-Examination by Mr. Hurley.

The telephones I had on the third floor at 6245 Cottage Grove were contracted for in my name. There might have been eight or nine trunk lines. I have no definite recollection of the number. They were not all put in at one time. I think there were four or five installed in the fall of 1937 or the spring of 1938. The others were put in later. The wire from 4715 Irving Park Boulevard came to the second floor at 6245 Cottage Grove, the horse book. Sheet writers and cashiers worked in the horse book. The manager or the service man had access to this wire 1220 from Irving Park. Anyone of the sheet writers might take the service. I don't remember who at any par-

ticular time. One might take it for three or four weeks and then somebody else. I know John Drumm took service for me one time. Either I or Fred Gitzen signed contracts for my telephone service. Al Kalus and John Butler worked in the office upstairs. Also Bill Foley. Telephone service was billed in my name. The telephone equipment was taken out early in 1940 I think. I was still paying rent on the third floor when the equipment was taken out.

Further Direct Examination by Mr. Hess.

Defendants' Exhibits C-4, C-5 and C-6 bear my signature. They are leases for the 63rd Street property. Defendants' Exhibits C-7 (a, b, etc.) came to me through the mail. Subsequent to receiving them I had a conversation with Mr. Goldstein in reference to that contract for electric lighting at 9730 Western Avenue.

Mr. Hess: Subject to cross-examination we add these to our offer of exhibits.

Further Cross-Examination by Mr. Hurley.

I had a pick-up phone service directly between the Club Southland and Flanagan's place. I believe there was an extension service from that phone from the second floor to the third floor room. My own men put in that extension. I opened the third floor office some time in 1937. I had broadcasting service in my other books. I imagine I had direct service from Flanagan to all these places. I 1221 don't know the details of the wires from one place to another. I had nothing to do with installing the service from Flanagan's place. He handled that. The cost of installation did not concern us. I paid so much for the service. I think I first took service from General News back in 1934. I continued with them and the successor, Nationwide, off and on while I was in business. I think I have had the Flanagan service at 6245 Cottage Grove since I opened the place. I had both services I would say the last three or four years. I don't know where Flanagan got his service. He might have been getting it from General News and later from Nationwide. All I know is I was getting both services. I have known Flanagan about fifteen years. I first met him around the Hawthorne race track when he was working there. I was operating a book

there. After that Flanagan used to make horse prices. He operated around Ogden Avenue. I did not see him very often. In the last few years I knew he operated a horse room and also a gambling house at 4020 Ogden. I have been over there quite often. This was in the neighborhood of the first broadcasting spot at 2135 Crawford. He moved later to 4715 Irving Park. I used to go to 4020 when I was closed and just gambling any place where I could find action. I don't believe I ever saw Flanagan at the Southland. I have known Hartigan thirty-five years. We used to go to school together. I don't know where Hartigan was working around 1930. He never worked for me at any time. I may have been absent from my places for a protracted period of time. One time when I was running just horses and blackjack I was out of the city for fifteen or twenty days in 1934 or 1935. Hartigan did not have charge of my places at that time. Whoever was managing the book continued in charge. I am pretty certain Al Kalus was in charge at the Southland. I have known Wait for

four or five years. I do not recall just where I met 1222 him. I know he operated at the Villa Moderne but

I was never there. I have seen Mr. Wait often in 1938 or 1939 at the Bon-Air. He seemed to be interested out there. He would be around the club and I had several conversations with him but he did not tell me what he was doing and I did not ask him. I never saw him operating the gambling room there. I don't think I was ever in it. I was out there a few times in 1938 and 1939 but more often in 1940. I heard the gambling room was operated in 1939. I used to gamble at Flanagan's but that was very early in the 30's when I was not operating. I used to see Hartigan at the Bon-Air in 1939 but I don't know what he was doing around there. I saw him there oftener in 1940. Mr. Johnson owned the place or was interested in it, I don't know which. I never sent any of my employees out there to work. Often I was not able to give them steady employment and they would get work at this country club. These wheel rollers work all over the country and they try to get the best job they can. I never sent anyone to the Bon-Air to see anybody. Some of my men asked if it would be all right for them to get employment at the Bon-Air and that is all I know about it. The fact that they were not bothering me trying to get me to place them a day or two a week was how I knew they were working out there. I never gave

any of them a recommendation but they might say they had worked for me. I do not recall anyone calling me from the Bon-Air to inquire about any of these men. I have known of Kelly for quite a number of years. He went to school with a younger brother of mine. I did not know much about him until I heard he had a gambling house on the North Side. I would say this was three or four years ago. I don't recall ever having seen him around gambling houses before. I have never been in the D. & D.

Club. I may have seen Kelly while he was operating 1223 this club but it would be only occasionally in a restaurant or such a place. I may have sold Kelly some playing cards. I used to buy them in quantities and resell them as an accommodation. I may have talked to Kelly over the phone about it. I never saw Kelly at 4020 Ogden Avenue at any time. I think I may have sold Jack Sommers playing cards at the Horse Shoe. I have never been in the Horse Shoe gambling room. I seldom visit other gambling rooms. I have known Sommers for quite a few years. I have seen him around different places where we gambled. It may have been twelve or fourteen years since I first met him. I don't recall just where I saw him. I saw Sommers very often in 1940. I met him a few times in 1938 and 1939 at the Bon-Air. I don't think I was ever at the Dev-Lin when he operated it nor was I at the Lincoln Tavern. I have been at the Harlem Stables on a few occasions back in 1936 and 1937. Hartigan was running the place. I only know where Kelly lives by hearsay. I have never been in his house. I may have called him on the phone at Oak Park. I don't know the defendant Mackay very well. I know I met him in 1940 but I would not say whether before. I have never been in the Casino and he has never been in any of my places. The first time I met defendant Brown was when I cashed checks at the Lawrence Avenue Currency Exchange. I believe I cashed a few in 1939. I think I introduced myself. Hartigan asked me to put some business there. Prior to that I had been cashing checks at the Mid-City Bank and also at the Washington Park Currency Exchange across the street from my place. The Lawrence Avenue Currency Exchange was quite a ways from my place,—seven or eight miles. I cashed a few checks at Lawrence Avenue. I don't just remember when. After Hartigan asked me to take some business there I took quite a few

checks up there. I did business at the Mid-City 1224 Bank. It was three or four miles from my place.

The I. C. Bank was two or three miles. Either Fred Gitzen or I would take the checks up to Lawrence Avenue whenever we had checks to cash. It was not every day. I do not remember anybody else carrying checks up there. I have known defendant Johnson for over twenty-five years. We both lived in the same neighborhood in Austin back in 1914. I am still living out there but Johnson moved up north. We have been good friends and have been around together quite a little. We met very often at gambling houses. I used to see him at Al Kennedy's place at Hoyne and Madison and at Tony Ragio's at Wood and Madison, at Gatewood's at Lincoln and Lake. I don't know just how many times Mr. Johnson has been out to the Southland but quite a few times. He was out there two or three times in 1936 when he would take over a dice table. He was out there ten or twelve times in 1937, maybe more, maybe less. It was an occasion when he came into my place. I don't recall his being there in 1938. I was operating then but to my best recollection he was not there. The same is true of 1939. I don't recollect his ever being at 9730 Western. I don't recall the first time Johnson ever took over a table in my place. I think it was prior to 1936. Probably in 1934. Often small players would start out betting a few dollars and work up to big bets. I had a limit of \$100 on the crap table. That means \$100 on any roll, Do Pass, Don't Pass or the Come Low. Many players start out low and work up to a big game. When Johnson would take the table over they would go over my limit. The game would be in progress when I would call Johnson. Whenever players I knew had previously played with Johnson would come in my place I would call him. If Johnson was tied up in a big game at the Horse Shoe then there could be no big game at my place that night. The players would sometimes be satisfied to continue playing and stay within my limit and sometimes they would leave. I did not tell them that I could not 1225 get hold of Johnson. I told them nothing. If they wanted to play, all right, if they didn't, all right. Nobody would ask me to arrange for a game with Johnson. It would be my idea. I would know when to call Johnson because the play would get too high for me or I would know the players that were playing. Sometimes when a

lot of players were betting less than \$100 it would be a larger gamble than I would care to handle. When the playing gets high it attracts attention and I find out about it. I am around at the tables. When Johnson would come I would check the table to him, that is, even up the table and charge him with the money and checks and then Johnson would take over the table. I would leave on the table \$1,500 or \$2,000 in 5's and \$1,000 in checks. Johnson would put his own money on the table in larger denominations. I have seen him play one of these big games many times. He would start with packages of bills. I have seen him put down \$4,000 in 20's and also \$50 or \$100 bills. I did not count the number. He would take these bills out of his pocket. I have seen him take money from his coat pocket and his pants pocket. He would put a pile of bills on the table or hand them to the box man. Johnson would sit down at the end of the table and watch the play. I don't remember ever seeing Johnson deal at 63rd Street. Johnson does not handle the dice. He books the game. After the game was over he would take the money out of the box and check it over and check the table back to me. He put his money in his pocket and walked out. I have never seen him with a bodyguard. He was always alone. There would be four men working on the table, a stick man and three dealers. Three worked at a time and one man off. That does not include the box man. I have seen Joe McLain working as a box man when Johnson took over the table. Also Alex Feinberg working as a dealer or a 1226 box man. I am trying to think of others in 1937. I think of a man named Smith but can't think of his first name. I did not try to think of these men before I got on the stand. I last saw Feinberg and Smith in 1939. I saw McLain in 1940 within the last two weeks. I can't recall just when these several games took place. I think there were about three in 1936. The last time he played in my place was in 1937 but I can't give you the dates. I don't remember how many were in the last game he played when I was open at 63rd Street in 1937. The whole table played against him. You can get as many as seventeen players around a table. My best recollection is that the table was crowded when he last played at my place. I had no interest whatever in Johnson's games. When the game was over he would take his money and leave. I got no split on his games. I furnished the employees and the

equipment and Johnson banked the game. I cannot name any of the people who played with Johnson. I know the names of many of my customers,—people I cashed checks for,—but I can't recall any that played on the particular nights with Johnson. I found out the names of patrons who cashed checks with me. Sometimes I cashed a check for a man who was recommended to me by someone else. To the best of my ability I took precautions to find out that the check was good. Some who were playing against Johnson might have cashed checks. Sometimes he would take checks and then cash them with me after the game was over. I don't remember his ever endorsing a check to me. I think I signed defendants' Exhibit C-5 in 1937. This lease says the premises were to be occupied as a social and political club. The same for C-4. I signed C-6 in 1939 and it says the space is to be occupied as a social and political club. 6241 Cottage Grove is a store in the same building which I have had since 1937. I made an 1227 entrance through that store to the rear on the first floor. I operated down there with horses as a sneak spot. One of my employees hooked up telephone service down there. Mr. Gitzen is a sort of handy man who took up telephone extensions many times. I had extensions from the second floor to the third floor. He may have brought up the extension which connected with 4715 Irving Park. Gitzen was employed by me and not the telephone company. I rented 9730 Western Avenue some time in 1937 and operated only a few hours at that time. The next I operated there was in 1939 from May to September. I was not then operating at 119th and Vincennes. I found 9730 by just looking around for a location. I did not like the 119th Street location. When I found 9730 it was nearly completed but they were still working on it. I saw some people employed there. I inquired whether the place was for rent and they referred me to Mr. Goldstein who was on the premises. I talked with him about renting the place and he said he would see if it was available. That is about all the conversation that day. I was stopping at other places looking for a location. I stopped at a roadhouse around 92nd and Western and at another on 95th Street four or five blocks west of Western. I made no written lease on the property at 9730 Western. I paid \$500 a month when I used it. When I did not use it I did not pay rent. I did not know Goldstein until I met

him there that day. I did not get receipts for my rent. I improved the property after I moved into it. It was a brick building and I paneled the walls. I put in a bar, some counters and electric light fixtures. I paid for all of it myself but do not remember the amount. The work was done over a period of time and some of my employees worked out there, two or three of them. I have no idea how much it cost me. I paid the cost from day to day out of my business. I was told whatever changes I wanted to make in the building would be at my own expense. I 1228 just went ahead and fixed it up to suit myself without talking to anyone about it. I think the building I built in Maywood was at 1217 Orchard Street. The building was on two lots which I own. I bought them from a fellow named Fox when I put up the building. I think I paid \$1,300. I took title in my own name. The building was about 48 by 90, was cement block construction, cost about \$11,000, and was built by Meyer & Stelzer. I operated a horse book there. It cost about \$13,000 to open. It was my own money which I had in a safety deposit box. I have a box at the Continental Illinois. I might have taken part of the money from that box and part of it from my safe at 63rd Street. I may have taken some of it from my box at the City National. I made the payments at different times and may have taken all of the money from my safe at 63rd Street. I think I have the deed to the property at home. I think Nadherny drew the plans for the building. He is the same architect who built 9730 Western. I don't know whether he built the Bon-Air. I operated on Orchard Street for a while in 1939 and then got closed. I went back to Forest Park and operated until September and got closed there. The Orchard Street place was known as Club Proviso. I kept no records of my gambling business, only running figures as to the amount of money. I had detailed Social Security records. I had no records from the different books except what they would send me from those places. When someone made a bet at the Southland book it would be recorded on a betting pad by a sheet writer. He used a carbon paper and made a duplicate sheet. The sheet writer would give the carbon to the manager of the book and the original to the cashier. On the winning horses the cashier would make extensions on his sheet when he paid off. There were no other records kept of those transactions in the book. At the end of the day the cashier turned over his

1229 sheets to the manager and the manager would total the ins and outs. I could tell from them how much was won or lost during the day's betting on horses. After the manager finished with the sheets he put them in the safe. They might be kept there for seven or eight or ten days and then they were destroyed. The duplicates were probably destroyed before. The duplicates are a check for the manager of extensions on the original. The cashier cannot mark a bet down for himself because it would not be on the duplicate. That is all that happened with respect to these sheets. I have described the whole operation. I did not send the original or the duplicate up to 4715 Irving Park to be audited. The manager of the book sent over sheets showing the daily doubles and the lay-offs. We did not send along the other sheets. We had no audit made of these sheets. Those sheets would constitute a record of what was won or lost in the book every day. If I had kept those sheets together with the payroll it would have shown what the book made. There are no records kept of the side games. I just kept running figures from day to day. If I made \$80 I had \$80 more than I had the day before. In a dice game the table starts with a certain amount of money which is got from me. That does not go through the cashier's hands. I get it from the safe. The money changer or cashier, as you call him, just makes cash-outs. He pays money to the winners. A floor man or box man writes the ticket for a particular cash-out and a runner takes it to the cashier and brings back the money.

Q. What record is made at the time of that transaction you have described?

Mr. Hess: I object to this line of cross-examination. It is altogether immaterial to the issues.

Mr. Hurley: I would like to find out what kind of record this man kept.

1230 The Court: Objection overruled.

(The following took place outside the presence of the jury.)

Mr. Thompson: I don't think that map ought to be up all the time. It has been up there five weeks. When ours was up for two hours they complained.

Mr. Hurley: This is different.

Mr. Thompson: You have no right to place one before the jury for five weeks. There is nothing fair about it. It is not up there for the purpose of being used.

The Court: Do you contemplate making any further use of it?

Mr. Hurley: We might. We used it this morning.

Mr. Thompson: You used it about one minute for one question.

The Court: Take it down until you are ready to use it.

Cross-Examination by Mr. Hurley.

(Continued in presence of jury.)

When the cashier paid out money he had the ticket that had been issued to him. He probably put it on a spindle. At the end of the day these tickets would be delivered to me and I would check them against the money. The cashier either had the money or the tickets. The amount of money the cashier had depended upon how long I was open,—sometimes \$4,000 or \$5,000. He would balance his cash against his tickets. That was the only record kept of the money made on the side games. After I checked the money against the tickets I destroyed the tickets. The sheets that were sent in from my other horse books were destroyed after I took off them whatever was won or lost. Sometimes I kept them for a few days. Some of the sheets were delivered to me at the end of the day at the

Southland and the Forest Park sheets might be delivered at my home. I would take off these sheets the win or lose figures. They were just ordinary sheets on which horse bets were written. I got only the originals. I had no use for the duplicates. Duplicate sheets were kept at the other horse books as well as the Southland but I got only a top sheet from the other places. The manager would send it in. The individual sheets were not sent to me. They were left at the place and occasionally I would look at them. I relied upon the managers to give me the correct figures. I trusted them. Maybe once a week I would check over the sheets from a previous day. No one else except Johnson ever took over a game in my place. I know Albert Couch. I believe he was employed by me at one time. I think he worked at the Club Proviso for a while. I think he was called Curley. I had a dealer named Jean Barnes. He was no relation to Tom Barnes that I know of. Lester Moss was a wheel dealer. He is not Skinny Moss and I don't think they are related. I know Skinny Moss but do not know his first name. I know

Tom Hartigan. He worked for me as a cashier or sheet writer at the 97th Street book. He is a brother of James Hartigan. I don't know whether he managed the book on School Street. I don't believe Maurice Downey ever worked for me. There are several brothers. I know Mook Downey is some relation to Bernice. I met her at the Lawrence Avenue Currency Exchange. My signature appears on Government's Exhibits X-65 to 70. Those checks were cashed by me through the Mid-City National Bank. Government's Exhibits X-71 to 118 except 107 are checks cashed at the Central National Bank through the Lawrence Avenue Currency Exchange. My endorsement is not on them. I was cashing checks at the Lawrence Avenue Currency Exchange during the period of their dates. I know nothing of that number "2" stamped on there in a 1232 circle. There is no reason why I did not endorse these checks. I was not required to by the Lawrence Avenue Currency Exchange. I had to endorse checks at the Mid-City because I had an account there. Checks I cashed there were not put through the account but I had to have an account there to get checks cashed. I used the bank account for Social Security and also for horse bets that were made over the telephone. At times I took bets from a number of book makers that were paid by checks. Government's Exhibits X-25 to 48 bear my endorsement. These checks were cashed at the Mid-City. I never cashed any checks at Albany Park Exchange. Government's Exhibit X-64 bears my endorsement. I don't know what the "M.D." is. I never gave any checks to Maurice Downey to cash for me. I remember one time I gave Mr. Hartigan some checks I had in my pocket and asked him to cash them for me. Government's Exhibit X-137 may be one of those checks. "Andy C." is written in pencil up in the corner. He may have put it there. The check isn't endorsed. It was cashed at Albany Park. Hartigan apparently cashed it for me. The same is true of X-138. The Social Security books contain names of all persons who worked at the Southland and my other places. In the small places the managers kept their own records, collected the Social Security tax, put it in an envelope and sent it to me together with a list of the employees. Once a month Mr. Butler would check the books. The chart was made from figures I gave from these books. E. C. Hirsch was a patron of the Southland. He played the wheel. When a person won money at one of my places he

could get a credit slip if he wanted to. That credit slip was not good at the D. & D., the Horse Shoe or at any other place. I never accepted payments from other places for losses sustained at my places.

1233 Mr. Hess: We object to this as improper cross-examination. It has nothing to do with the direct examination.

Mr. Hurley: I understand this witness is not on for any limited purpose.

The Court: He is on for cross-examination. Being a defendant, that cross-examination is quite broad. Objection overruled.

The Witness: Mr. Brantman made out my income tax return for 1933. I met him at his office. No one else was with me. I met him by appointment. I believe I called him up. I wanted an accountant to check a brokerage account and Mr. Brantman was recommended to me by someone, I don't recall who. Government's Exhibit R-58 is my return for 1933 prepared by Mr. Brantman.

Q. You gave Brantman the figures to prepare that return?

Mr. Thompson: As to defendant Johnson and other defendants I object to this examination on the ground that it is hearsay and also that it is immaterial to any issue in this case. These men had no connection with making these returns and there is no showing they had any knowledge of them.

The Court: Overruled.

The Witness: Whatever figures Mr. Brantman had I gave to him. I also gave him a power of attorney to check up the brokerage records. I gave him the figure \$6,450 which appears after "Miscellaneous commissions." Government's Exhibit R-59 is my return for 1934 prepared by Mr. Brantman. The item shown on Line 1, "Miscellaneous, \$13,700.50," is the amount I gave him but I told him my business was gambling. I may have taken the figure from a memorandum book or from a piece of paper. Government's Exhibit R-60 is my return for 1935 prepared in Brantman's office. I signed it. On Line 1, after "Salaries, wages, Commissions, fees, etc." is \$2,700. That is all of my
1234 earnings for 1935. I gave that figure to Brantman.

Government's Exhibit R-61 is my return for 1936 prepared by Brantman. I gave Brantman the figure \$10,950" after "Miscellaneous earnings." It was given in a lump sum either out of the little book I had or marked down

on a piece of paper and handed to him. Government's Exhibit R-62 is my return for 1937. It bears the signature "A. J. Creighton" and was prepared by Joseph Radomski. I gave him the figure \$20,868, opposite "Other income." That is the total amount of money I made that year. I assume I gave it to him in a lump sum. I also gave him the loss on there from stock market operations. I changed from Brantman to Radomski because I gave Brantman money to pay my tax in full and on several occasions I got notice from the Internal Revenue Department that my quarterly payments were due. When I called him about it he said there must be some mistake and that he would take care of it. When the next quarterly payment came around I got another notice. I lost confidence in Brantman. I think Radomski had been filing returns for people at my places and I asked him to make out my return. He used to be a revenue agent and I thought he ought to know how. I don't remember just how I got in touch with him. I did not know he was working for defendant Johnson at that time. I never saw him at Sunny Acres. Government's Exhibit R-63 is my return for 1938. It was prepared by Radomski and signed by me. The item "Income or loss from business or profession, \$11,300" was given to Radomski by me. Defendants' Exhibit R-64 is my return for 1939 prepared by Radomski. The item on Line 9, "Income or loss from business or profession from Schedule D \$22,279.81" was gain from gambling. The figure on the next line is from my brokerage account. I have been out to Johnson's farm a few times. I would say three or four, just visiting. I 1235 remember seeing Mr. Wait out there, but no other defendants.

Redirect Examination by Mr. Hess.

Government's Exhibit R-58, R-59, R-60 and R-61 were signed by me in blank and later filled out for me by Brantman. I told Brantman the source from which I received my income. Brantman was then making out returns for gamblers generally. The same was true of Radomski later. I don't know whether the figure "2" in a circle on the checks is a teller's number. I know nothing about it. Mr. Johnson did not bring me to Brantman's office and introduce me to Brantman, as Brantman testified. I never discussed my income tax returns with Mr. Johnson or with anyone else except the two auditors who prepared them.

I know Nadherny, the architect. I paid him for the extras at 9730 Western. It amounted to about \$6,000. I checked the chart, defendants' Exhibit C-3, and verified it with electric light bills for 1936 and with Social Security records for later years.

DEFENDANTS' EXHIBITS C-3, C-4, C-5, C-6, C-7 (a, b, c and d) received in evidence.

WILLIAM P. KELLY, being first duly sworn, testified as follows:

Direct Examination by Mr. Callaghan.

I live at 621 Washington Boulevard, Oak Park. I am thirty-seven and married. I graduated from high school and then took a job as stenographer with A. M. Castle & Company. I stayed there about a year and a half and then I went to work for Fishman Glass Company as a stenographer and later I was with the successor of this company as a salesman. I worked as an estimator and solicitor for them until about 1925 or 1926. Then I worked for about a year for another glass company. In 1927 I went to work for the Lawndale Kennel Club and stayed there until it closed. During all this time I had been doing some gambling. I rented space for the D. & D. Club in 1936 after negotiating with Mr. Tavalin, the agent of the building. I first occupied space in the basement and then in August or September I went up to the second floor. In my talk with Mr. Tavalin I learned that William R. Johnson owned the building. I did not know who owned the building when I started my negotiations for space. I finally came to an agreement with Tavalin for \$450 a month. Occasionally I got behind in my rent. I could not pay my rent when I was not operating. I occupied the premises from May, 1936, to May, 1939. I operated with horses for only a few days in October, 1939. I was operating approximately forty per cent. of the time during this period. I paid all bills for supplies, public service and employees' wages while I operated the D. & D. Club. I hired the employees and directed them. Mr. Johnson never employed anybody to work at the D. & D. Club nor did any of the other defendants. I gave all orders there and settled all disputes. I was never employed at any of the gambling establishments named in the indictment except for myself at the D. & D. Club. Some

of those named I never heard of. I never hired any of the employees to work in any of the other establishments nor did I exercise any control over any person employed in any such establishments. I contracted for telephone service at the D. & D. Club in the name of Joseph Carpenter because I did not want my name to appear on telephone bills. The contracts are in my handwriting and I paid all the 1237 bills. When I started at the D. & D. Club I had only four or five employees but it built up to possibly 125 employees on both shifts. I did not have so many employees when I had just horses in the afternoon. I filed income tax returns for the years 1936 to 1939 inclusive. I never discussed these returns with defendant Johnson nor with any other defendant. I never discussed with any defendant the filing of his return or the returns of the various defendants. I never discussed with any defendant the contents of the returns of others. I did not know whether the other defendants filed income tax returns or the amounts of the returns. I knew nothing about the amount of the return filed by William R. Johnson and never discussed the subject with him. I cashed many checks at the D. & D. Club. These checks did not necessarily represent losses of patrons. I also exchanged currency to get new money for old. It was just a turn-over of money. I cashed many checks for my neighbors. There was a garage around the corner that used to come in with its payroll. I also cashed checks for the employees at Ambassador East. The Bennett Landgren Garage payroll was around \$200 to \$300. Many times I would cash a patron's check for \$100 and he might lose \$20 or \$30 and go out with the rest of the money. Other times I cashed checks for patrons just to accommodate them. I never turned over to defendant Johnson any profit or gains from the D. & D. Club nor to any other defendant. Nor did I ever agree to turn over any income from the club to any other person. I paid the decorating bill at the D. & D. Club. We used \$100 bills for cash-outs where the patron won more than \$100. Where patrons played at the cash game and accumulated \$5 bills we would give them \$100 bills for the 5's which were our working money. I have known the defendant Johnson for probably twenty 1238 years. I saw him at the D. & D. Club many times. Sometimes he would come in looking for a gamble and sometimes I would call him. Sometimes he came once or twice a week and sometimes four or five times a week. When a table got to a point where I could not handle it I

would call Johnson. I would check the table and turn it over to him. From that time on the table was his. He stood the losses and took the winnings at that table. When I could not get hold of Johnson the players had to stay within my limit.

(The following proceedings took place out of the presence of the jury.)

Mr. Callaghan: Defendant Kelly offers in evidence defendants' exhibit marked K-4, being indictment No. 32156 returned March 19, 1940, by the same Grand Jury that returned the indictment on trial. The first count of the indictment charges defendant Kelly for 1936 with wilfully attempting to evade income tax of \$23,925.53. The second count charges defendant Kelly with wilfully attempting to evade income tax for 1937 in the amount of \$109,359.89, and the third count with attempting to evade income tax for 1938 in the amount of \$109,700.01. I offer to prove that the William P. Kelly named in this indictment is the same William P. Kelly on trial now and that the income which is described in indictment No. 32156, Exhibit K-4, is the same income which is charged to defendant Johnson in the analysis made by the witness Clifford.

Mr. Hurley: We state the same objection to this as we stated to the other indictment,—that it is immaterial.

The Court: Objection sustained. I think that if I were prosecuting this case I would not object to it. It has 1239 no more materiality than a streetcar transfer but I think I would let it go in.

Mr. Callaghan: The occasion may arise when we might want to plead former jeopardy.

(The following proceedings were had in the presence of the jury.)

I paid Social Security on my employees during all the time I operated the D. & D. Club. The column marked "D. & D." on defendants' Exhibit S-28 shows correctly the periods the D. & D. operated for the years 1937, 1938 and 1939. The year 1936 is approximated from my light bills. They were large when I was open and small when I was closed.

Mr. Callaghan: We offer in evidence this column of the chart.

Cross-Examination by Mr. Miller.

I graduated from high school in 1920. I first worked for A. M. Castle & Company as a stenographer and then for the Fishman Glass Company. I forgot to mention that I worked for Charles Newberg & Company in 1928 after I worked at the race track. I worked at the Lawndale Kennel Club from spring until fall of 1927. I worked there for defendant Johnson who employed me. He had been a neighbor of mine when I was living on Quincy Street. I handled betting tickets at the track. I set up the trays for the sellers at the windows. In those days they did not have what are called totalizers. I do not remember what compensation I received. Probably \$45 or \$50 a week. I was a salesman and estimator for the glass company in 1928 and probably drew \$50 a week. I also forgot to mention that I worked a short time after that in 1929 for the 1240 Western Electric Company in the bookkeeping department. I worked there about six months. I don't remember my salary but it might have been about \$35 a week. After that I just gambled around Chicago. From 1929 to 1936 I did nothing but gamble. I never worked in a horse book or in any other gambling establishment. I gambled mostly around card shops and poolrooms. I was in gambling houses around Chicago. They did not have names. One place was at Cicero and Madison where I used to shoot craps. I have been at the 4020 Club but I never gambled there. I never had a job at the 4020 Club and I don't know who was running it. I had a small bankroll when I was gambling. My mother was dependent on me. I might carry \$50 with me. I do not recall whether my bankroll was \$300 or \$400 or \$500. I cannot recall offhand any other places other than those around Cicero and Madison but there were other places around town where I gambled. I shot craps on the North Side and also on the South Side. I shot craps at 67th and Stony Island in a cigar store. I can't remember the spots I gambled four or five years ago. These were not regular gambling establishments. They were just crap games. I lived out in Austin at that time. That was a long ways from 67th and Stony Island. I don't know how often prior to 1936 I was in a regular gambling establishment. I went to them occasionally. It is hard to say how often. It might have been once a week and then maybe not for two weeks. I know the defendant Hartigan and have for twelve years or more. I do not remember

where I met him,—somewhere around the West Side. I do not remember whether I was introduced to him or whether I just met him some place. I think I met him while I was a glass salesman. I do not recall that I sold him any glass. I have gambled with Mr. Hartigan. I did some 1241 gambling with him at Harlem Stables. I may have gambled with him before he opened Harlem Stables but I do not remember right now. I saw Mr. Hartigan from time to time after I met him twelve years ago. I never kept track of the number of visits I had with him. I might have seen him once or twice a year on the West Side after I met him. I never visited at his home and he never visited at mine. I used to go out to Harlem Stables when my place was closed, maybe once or twice a week. I would be visiting there and I might gamble once in a while. I used to see Mr. Johnson at Harlem Stables once in a while. Occasionally I would take a small piece of a game with Hartigan. I never did anything else but gamble there. I know the defendant Sommers for possibly eight or ten years. I think I met him down on 12th Street in one of those card shops near Kedzie. I don't recall just the place where I met him. I may have been shooting craps there at the time. I may have met him in a room back of 12th and Kedzie. I don't know who ran it. I did not see Sommers very often. At first maybe a couple of times a year. I never gambled with him. I have visited at the Horse Shoe maybe six or eight times. I never worked there or gambled there. I may have seen the defendant Johnson 'here once in a while but none of the other defendants. I know John Flanagan for perhaps eight or ten years. I do not remember where I met him. I may have seen him three or four times a year during all that period. I have known you for a long time and I don't know where I met you either. I can't remember where I met all the people I know. I have seen him at his place of business at 4020 Ogden. I never gambled there and I don't recall seeing any of the other defendants there. I have known Ed Wait for thirteen years. I worked with him 1242 at the Lawndale Kennel Club in 1927. I don't know what he did there. I was pretty busy with my own work. He never gave me any orders. I have seen Mr. Wait very few times since my employment at the Kennel Club. I think I saw him one time out at Lincoln Tavern when I was out there visiting Jimmie Hartigan, who ran a gambling house there. I think it was in 1935. I have seen Mr. Wait at the Bon-Air during the last two years. Perhaps a dozen times.

I would be there having dinner and watching the show and I would see him walking around. I never gambled at the Bon-Air.

Q. Were you ever in that gambling room out at the Bon-Air?

A. I may have been, I don't recollect.

Q. What is your best recollection on that subject?

Mr. Callaghan: That question has been asked and answered now just four times.

Mr. Miller: It has not been answered yet, I submit.

The Court: It has gotten to be the fashion to answer, "It may have been" or "It might not have been." Those are not answers. We might as well determine that now.

Mr. Callaghan: The witness said he did not remember. I submit that is an answer. If he does not remember he does not remember.

The Court: I am just referring to those answers, "It may not have been," "Maybe I did, maybe I did not." Those are not answers. Go ahead.

Q. You don't know whether you were in the gambling room or not?

A. No, I do not.

I do not remember seeing defendant Wait anywhere else. I was at the Villa Moderne once for dinner but I did not see Mr. Wait. I did not go to the gambling room there.

I know the defendant Brown since some time in 1938 1243 when I started to do business with him at his currency exchange. I walked in and introduced myself. I brought some checks to have them cashed. Jimmie Hartigan asked me to take my business there. He had some interest in the currency exchange. I don't think Hartigan was there when I went in. I used to go over on an average of three or four times a week when I was open. I would leave my checks and then pick up the money the next day. There may have been occasions when I sent my checks over but most of the time I took them there myself. I would usually get there around noon. I know Koog Downey. That may be Maurice. He never worked for me. I had two Downeys working for me at the D. & D.,—Duff and Woose. I don't know their right names. Those are nicknames. They were both doormen. I think they are related to Bernice Downey but I cannot vouch for that. Duff used to take checks over to the currency exchange for me. He also used to take checks home and his brother would take them to the Albany Park Exchange. I would put them in an envelope

and seal it and give it to him and his brother would take them over the next day. There was no special reason for changing the method of handling my business when I started at the Lawrence Avenue Exchange except I just wanted to take care of it myself. It is about a fifteen-minute ride over there. The Downey boys worked for me all the time I was open. I know John W. Geary, also called Bud. He worked for me at the D. & D. Club as a cash-out ticket writer. He wrote out a ticket for whatever amount was called out and then put the same amount on the stub. My Social Security records will show the periods he worked for me. I know Barney McGrath. He worked for me as a floor man or box man. He worked on and off for a couple of years. I know defendant Mackay for three or four years. I got acquainted with him when he asked for a job at the D. & D. Club around the first part of 1937. I think he 1244 worked as a box man for about a month and a half. I don't know whom he worked for prior to that. I inquired about his qualifications when I interviewed him. I had Peter Montague working for me as a box man at the D. & D. Club. I can't keep in mind how many times these fellows worked for me or the length of time. I know defendant Creighton. I have known his family since I was a little kid but I have not known him personally very long. I have known his brother for twenty years or more. I think I was in the Southland Club once. I was never at 9730 Western nor in any other of Creighton's Clubs. I have known Roy Love since he did some work for me at the D. & D. Club in 1937. He did a little repair work. I never knew him before that time. I asked Jack Sommers whether he knew anyone who could do some repair work and he recommended Love. My contacting Mr. Tavalin with respect to leasing the premises at Dearborn and Division resulted from my noticing a For Rent sign in the building. I was looking for a place to open a small horse book on the near North Side and I made arrangements with him to take over the basement space and also the lodge hall space on the second floor. Both spaces were empty when I examined them. They had been occupied by a lodge,—the upstairs for a lodge hall and the basement for other lodge uses. I think the basement had been used for a horse book at one time but there was no equipment there when I took it over. I hired a couple of carpenters and put in a partition and a counter for a horse book before I opened up in the basement. Roy Love did not do this basement work. Mr. Schultz, who testified, worked in the room

upstairs. I operated nothing but a horse book in the basement. I opened in the spring of 1936 around April. I think I opened with four employees. I was in direct charge. I

had not worked in a horse book prior to that time.
1245 Some of my help was experienced. The only experience

I had was when I worked at a race track. Around December I opened up the gambling room on the second floor. When I took the room over it was just a big vacant room except that it had some benches around the wall and a big organ in the corner. I tore out the benches and the organ. Roy Love did this work for me. I had called Jack Sommers to recommend someone for the job and he recommended Love. I put in a door at the top of the stairs and a counter and wallboards for a horse book. I think I opened the book about August, 1936, and in December I put on the side games. I added the necessary tables for craps and blackjack and I put in some roulette wheels. There were also chairs for the patrons. Later on I carpeted the front and put in some new plumbing. I paid for all of these alterations and for the equipment. I think the basement cost me around \$100. I might have spent \$250 upstairs for alterations. The total cost of the equipment and the improvements was close to \$1,000, most of which was spent in the latter part of 1936. From time to time other improvements were made. I started operation of the side games at night in the latter part of 1936 and continued until about February, 1937, when I was closed. I may have continued with the horse book during the spring of 1937 but I did not open the side games until about June. I started in a small way and built up as trade increased. I think at one time I may have had three or four crap tables and four wheels. They never operated all at one time. The house limit was \$100 on the crap table and \$10 on a number of the wheel. People used to come around in droves looking for jobs. They came from all over the country. Most of them were experienced gamblers. Before opening the D. & D. Club I had never

1246 operated a gambling house but I had gambled. When I opened the horse book early in 1936 I had about a \$2,500 bankroll and by the time I opened with the side games it had increased to \$5,000. I paid for the improvements out of the income of the business as I went along. In the horse book we had cashier's sheets and on these there was a record of ins and outs. At the end of the day the difference showed whether I had won or lost. The help was paid in currency every day and there were other ex-

penses taken out of the income. The duplicate sheets were thrown away at the end of the day and the originals were kept for a couple of days to check against mistakes and then they were thrown away. I kept track of my winnings in a little book. At the end of the day I would write down on a piece of paper the result of the day's operations and then at the end of the month I would total it up and throw the daily memoranda away. In the operation of the side games the money changer kept a scratch sheet which was turned over to me at the end of the day. After I checked his cash and pay-out slips I threw it away. The ins recorded were all the money taken in and the outs were all the money paid out including expenses of operation. I kept a daily memorandum of the results and then at the end of the month I would put down the one figure total in a pocket memorandum book. I have that book now which shows the results of my business by the month for the last two or three years. Defendants' Exhibits K-1(a), K-2(a) and K-3(a) are records I was telling about covering the years 1937 and 1938 and 1939. That is the only record I have. For a short while I occupied a small space on the first floor as a cigar store. This was included in the original rent. I contended that I was paying too much for my space and Tavalin told me to go ahead and use the store for a while. During the months I was not in operation I did not pay rent for 1247 the premises. Mr. Tavalin was always after me to collect the rent but I told him I could not pay it because I was not operating. I got behind a substantial amount in 1937 and later made a settlement for \$100. I paid the rent at Tavalin's office or he sent an employee out to collect. I paid in currency and got a receipt. Each month when I got a new receipt I would throw the old one away. If I was closed long enough my rent arrearage would run as high as \$3,000. I think the highest amount paid in settlement of these arrearages was \$100 but I don't remember the date. I paid all the light and gas bills while I operated. When I paid the bill and got a receipt I threw away the old one. I don't think I have any receipted bills now but the records are at the Meter Service Corporation. An air-conditioned unit was installed in the premises while I was there. Mr. Johnson arranged for the installation. The first I knew about the matter was when a man came to survey the premises. I did not request Mr. Johnson to put in this plant. After the plant was installed Mr. Johnson gave me the money to pay a contract price. It was

about \$11,000 in currency. I don't remember just where Mr. Johnson was when he gave me the money but I think in front of the building or in the lobby. The money was wrapped in paper and he handed me the package. I don't remember just what he said but probably he had made a date with the salesman and wanted me to take the money over and pay the bill. I met the salesman at the bank and we went to the teller's cage and paid the bill. After this air-conditioning unit was installed my rent was not increased. It remained the same throughout my tenancy. I do not remember whether I was in arrears after this unit was installed but I was in arrears several times. Whenever I closed I got behind. In 1939 I was closed but I wouldn't say whether I was in arrears in rent. I never paid any rent to Mr. Johnson personally. I had all my dealings with 1248 Mr. Tavalin of the General Management Investment Company. In my talk with Mr. Tavalin about renting the building I first learned Mr. Johnson was the owner. When I told Mr. Tavalin I wanted to use the premises for a club he said he would have to talk to the owner about it and when he asked me to give him some references I asked him who the owner was and he told me. I then told him I was acquainted with the owner and that I thought he would vouch for my credit. I never talked with Mr. Johnson about taking over the premises. I dealt entirely with Mr. Tavalin. Government's Exhibit R-14 is my income tax return for 1934.

Q. And who prepared this for you?

Mr. Callaghan: This is not proper cross-examination. The direct examination was confined specifically to the years named in this indictment.

The Court: Overruled.

The Witness: I don't know who prepared this return but probably Brantman. I filed returns prior to that time but I do not recall the specific years. I do not remember whether I filed returns for 1932 or 1933. If I made enough money I did. I cannot state specifically any year prior to 1934 when I filed a return but I know I filed some.

Q. On this Government's Exhibit R-14, Line 1, where it says, "Salary, wages and commissions, miscellaneous commission earnings (salary, \$4,745)."

Mr. Callaghan: Same objection.

The Court: Overruled.

The Witness: That amount is not salary. It is money I earned. Nobody paid it to me. I furnished the figure to

Brantman from a slip of paper I kept. Government's Exhibit R-15 is my return for 1935 which was prepared 1249 by Brantman. On the first line is \$1,800. I made the money gambling. Nobody paid it to me. It might not have been exactly \$1,800. Sometimes I took a little the worst of it and made it round figures. Government's Exhibit R-16 is my return for 1936 which was prepared by Brantman. My signature is at the bottom. The sum \$3,655 on the first line was earned by me as profits from my horse book. I arrived at the amount from sums entered on pieces of paper and the totals put down from month to month. I did not give Brantman these details. I just gave him one figure. I first met Brantman at his office. I went there and introduced myself. I had not known him prior to that time. I knew that Brantman more or less specialized in handling tax returns of bookmakers and gamblers. I heard he was good on tax returns and went to see him. Government's Exhibit R-17 is my return for 1937 which was made out by Joseph Radomski. On Line 11, the sum \$9,135 opposite the word "Speculator" is profits from my gambling business. I gave that figure to Radomski from my memorandum which was a tabulation from month to month. I had known Radomski for some time. I just chanced to meet him and he told me he was making out income tax returns and I told him I would give him my business. He had worked with me at the Lawndale Kennel Club. I just happened to meet him on the street and he gave me his phone number out on Green Street where he was working. I did not know whether he was making out returns for other defendants. I had no talk with him about it. Government's Exhibit R-18 is my return for 1938. On Line 9 the figure \$10,435 was furnished to Radomski by me. I signed the return. Government's Exhibit R-19 is my return for 1939. It was prepared by Radomski and I supplied him with the figure \$10,324, income from business.

1250 Q. I show you Government's Exhibit R-16(a) for identification and I will ask you to state whether you have ever seen that before.

Mr. Callaghan: This is not proper cross-examination. The document is not in evidence.

The Court: You may answer.

The Witness: I think I have seen the document before. It appears to have been mailed to me so I must have received it. I took it down to Brantman who had prepared my return for the year involved. The document does not

bear any of my handwriting. The writing on there is not mine and I don't know whose it is. On Government's Exhibit R-14 my signature appears at the bottom but I do not recognize any of the other handwriting which appears in pencil. I have never seen it before. I never talked to anybody about the matter written on this document. I never saw anybody do any of the writing on there. I closed the D. & D. Club some time in October, 1939. That is the last time I was open. I stored the equipment in the basement at Dearborn and Division. Some of it is there now and I sold the rest of it. I paid no storage to anyone since I put my equipment in the basement. I don't remember ever getting any equipment from defendant Sommers for use in my place. I seldom moved any equipment but I may have moved a table to somebody. As I recollect I loaned a crap table to Hartigan and the Kedzie Motor Service moved it. The man testified in this case. I don't recall loaning equipment to anyone else. I never sent anything to the Horse Shoe or out to the Dev-Lin. I have with me my Social Security records. Government's Exhibit S-11 is the one for 1937. John W. Geary worked for me in that year. He was a ticket writer in side games. Barney McGrath worked at the D. & D. Club in 1937 as a floor man and box man. He got \$15 a day. Conrad 1251 McGrath did not work there. Government's Exhibit S-12 is my records for 1938. They were kept by Mr. McLaughlin. Geary did not work for me in 1938. Government's Exhibit S-13 are my records for 1939. They show Geary worked for me from January to May as a ticket writer. I got acquainted with him in 1937 when he came and asked for a job. I have seen him at the Bon-Air but I don't know what his duties were. I saw him in 1938 and 1939 but do not remember seeing him in 1940. Mr. Johnson came frequently to the D. & D. Club after I put in the side games around December, 1936. I invited him there. I knew he was a gambler around town with a good reputation and I wanted him there to take care of any high gambles that came. I don't recall that there was a game in progress the first time I telephoned him. He came to the club and I had a talk with him about his taking over gambles that were too high for me to handle. There was no one else present at this conversation. After that he came in quite frequently and sometimes he gambled. If he was not gambling he would be visiting with people in

the club. No one ever bet \$100 with me because I would not take it. I had a small bankroll and I could not handle big betting. If a high bettor got in a game I turned it over to Mr. Johnson. I would check the table to him and he would take it over. In checking the table I would sell him the dealing money on the table. Sometimes this would be \$1,000 or \$1,500. I would also sell him my rack of checks. When he was running a table he might sit at the box or upon the stand and watch. My dealers worked at the table and I paid them. Johnson did not reimburse me. I was glad to have him there. He had a fine reputation and I was a small gambler trying to make a reputation. I never participated in his games. In these big games Johnson needed a bigger bankroll than I had on the table and he 1252 would take it out of his pocket. He would take any bet. There was no limit. He always had plenty of money with him. There were many high rollers who came in to my place to gamble. A man by the name of Loeb, who was a New York broker, and a man named Sweitzer from Chicago. I don't know their first names. I think Mr. Sweitzer was in the liquor business. I never cashed any checks for these men. I have not seen Mr. Sweitzer recently but I think he was in my place in 1938 and perhaps the early part of 1939. The same is true of Mr. Loeb. There was also a broker from Chicago by the name of Sutterman. I don't know his first name nor the concern with which he is connected. I think he is on La Salle Street. There were a lot of other people. Another was a Lester Clifford from Cincinnati. I think he was in the wholesale clothing business. I have gambled with these men. The only time I wanted Mr. Johnson to take them on was when I was not able to handle the play. Sometimes these men made high bets and sometimes they did not. I have not seen any of them recently nor talked with them. I closed my place about the first of June 1939 and I have done nothing but gamble since. I gambled some at Harlem Stables. I saw Jimmie Hartigan around there. I imagine he was the proprietor. Some of the dealers who worked at Johnson's table were Frank Samples, Eddie Notter, Toby Lasson, Monk Hill, Hermann Siegel and Hymie Indes. These are not all the money dealers I had. They would come and go. They worked for me a while and then jumped to Saratoga or down to Florida. They went all over the country. Those I have named worked on the table with Mr. John-

son. They would not necessarily know he had taken over the table. They would see me checking the table but I did not tell them what I was doing it for. They would see him put money on the table and when he was on the box or on the stand they would know that he had the table. I 1253 don't remember seeing him deal. Johnson never sat on the look-out stand when he did not have the table. The dealers did not necessarily know that he had taken over the table when they saw him on the stand. Only box men are permitted to sit on the stand. The platform would accommodate two stools. Johnson would put his bankroll on the table and my dealers would handle it. The winnings were put in the box and they belonged to Johnson. He took the money away with him without turning it over to me.

Redirect Examination by Mr. Callaghan.

I bought supplies from several dealers around town,—the American Supply Company, the Edward Don Company, and Lawton & Company and three or four others. Johnson had a good reputation around Chicago in the gambling fraternity and it helped me in my business to have him there to take care of the high gambling. He had a large bank roll. Johnson never touched any of my money. He could not go to my cashier's window and get money for any person. I heard Hayes testify about Johnson asking my cashier for some money but that never occurred.

DOMINICK CARROLL, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I am in the roofing insulation business. My company is the Bonded Roofing & Insulation Company, 3050 Armistage Avenue, Chicago. I am general manager and director of sales of the corporation. The books and records are kept under my supervision. I did some insulation for defendant Flanagan in the spring of 1939. My first conversation with him took place at 4020 Ogden and I tried to 1254 I had argued about insulation making his gambling house more comfortable both winter and summer, he

said it might be a good thing but that he did not own the building and that I would have to talk to the landlord, Mr. Johnson. Several days later I met Mr. Johnson at the 4020 Club by appointment. I don't know the date but it was in the spring of 1939. I told Mr. Johnson I had been talking with Mr. Flanagan about insulating the building and he said, "I am not going to put in any insulation. If Flanagan wants it he will have to put it in." I talked further with Flanagan about the matter and finally got a contract from him. I agreed to insulate the roof of the building at 4020 Ogden for \$325. I completed the job and Mr. Flanagan paid me the contract price. Defendants' Exhibit F-2 is the record giving the name and file number of our jobs. Defendants' Exhibit F-2 (a) is an envelope containing the job tickets. The entry in the book marked "F-2" is "J. Flanagan. Account Number 1021, 4020 Ogden Avenue, \$325, 5/25/29, insulation." The envelope marked "F-2(a)" contains the work tickets showing the amount of materials used and the time of the men who did the work. These records are kept in the regular course of business and they truly record the transactions as they occur. Defendants' Exhibit F-3 is the ledger sheet from our books showing the account of John Flanagan to which I have just been referring. It is kept in the regular course of business and truly records the transactions in the account. This account refers to the insulation job done for Mr. Flanagan at 4020 West Ogden Avenue, Chicago, and shows that he paid the contract price.

Mr. Thompson: We offer in evidence DEFENDANTS' EXHIBIT F-3 for identification, the book entry F-2 having already been read into the record.

1255 Mr. Plunkett: The Government moves to strike the testimony of the witness relating the conversation with defendants Johnson and Flanagan on the ground that it is self-serving.

Mr. Thompson: Our position is that proof of these conversations by this witness is not self-serving. As to Mr. Flanagan it is proof of a transaction. As to all the other defendants it is certainly competent. One of the issues in the case is that Mr. Johnson is the owner of this gambling house. This is proof tending to show that he was not and that he leased the premises to Mr. Flanagan who was the owner. It is also competent in connection with the alleged conversation between Johnson and Lenz of the Nation-

wide. If that was competent evidence then this is some explanation of why Mr. Johnson would be interested in settling a dispute which might lead to loss of a tenant in his building.

The Court: I think I will deny the motion.

Cross-Examination by Mr. Plunkett.

I have been at the 4020 Club quite often as a patron and I was familiar with the place when I talked with Mr. Flanagan about insulation. I was there playing the horses and talked to Mr. Flanagan about insulating his roof. I had been a patron of the 4020 Club about ten years but I never patronized any other gambling house. There was a time when this club operated at about 2141 South Crawford. I only played the horses. I never went to the club at night. I never knew anyone connected with the place except Mr. Flanagan. I knew some of the employees but did not know their names.

1256 Mr. Thompson: We offer in evidence DEFENDANTS' EXHIBITS J-6 and F-3.

Mr. Plunkett: We have no objection to them.

The Court: They may be received.

JOSEPH I. SPAGAT, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I live at the Brown Hotel in Louisville. I am catering manager there. I have been in the business for twenty-five years. I was employed at the Bon-Air Country Club in 1938 and 1939. I began my employment about April, 1938. My employers were Mr. Johnson, Mr. Skidmore and Mr. Wait. About April, 1938, I had a conversation at Bon-Air Country Club with Mr. Skidmore and Mr. Johnson. Mr. Johnson introduced me to Mr. Skidmore, saying, "This is our catering manager." Mr. Skidmore said, "I am glad to have you with us." I built the kitchen before the season opened. There were a lot of men working around the premises during that period. Mr. Johnson and Mr. Skidmore were there frequently and also Mr. Nadherny, the architect, and Mr. Love, the builder. I was buying equipment

from the Albert Pick people and supplies, liquor, groceries and so on from merchandisers. The club opened in 1938 two days before Decoration Day. After the club opened Mr. Skidmore told me he appreciated the work I was doing for the club. Mr. Skidmore was around there while construction was going on and talked with a lot of people. After the club opened Mr. Skidmore came out often in the afternoon and the evenings and complimented me on the work I was doing. I cannot fix exact dates of conversations. They came up very often. One time I wanted an okay and Mr. Johnson told me to talk to Mr. Skidmore.

During 1938 Mr. Skidmore frequently sent flowers 1257 from his farm. In 1939 he bought flowers for us through some florist in town. In 1938 I talked with him about supplying poultry. It was about June after the club opened. He told me to get in touch with Mr. Smith, his farm manager, and look at the chickens. During the construction in 1938 I used to see Pine Tree Farm trucks at the Bon-Air Country Club picking up rubbish and garbage. They also delivered milk and cream for us. These trucks were marked "Pine Tree Farms." I cannot remember particular conversations with Mr. Skidmore. They were just general conversations talking business. I went to work at Bon-Air again about April, 1939. Mr. Johnson was at the club nearly every day for a while. Mr. Skidmore would be there three or four times a week. He would talk to Mr. Love and some of the contractors. I saw him talking to Mr. Davis who had the painting contract and to Mr. Naderhny, the architect. Near the close of the season in 1939, when Mr. Johnson was on vacation, Mr. Skidmore came to the club nearly every afternoon and evening. The club season ended on Labor Day and the conversation I have in mind took place about 9 o'clock in the evening about the middle of August. Mr. Elmer Johnson and Mr. Skidmore were dining together and Mr. Skidmore sent for me. Mr. Skidmore told me that there was some irregularity at the club and he wanted me to discharge immediately two kitchen checkers. Opal Ellis was one of them. He told me that if these irregularities occurred again he would discharge me. I went immediately to the kitchen and discharged the two checkers. During the construction of the gambling room at the Bon-Air Mr. Skidmore was frequently in the room looking around and talking with the architect and the contractors. I was not at the club in 1940. I know the defendants,

except Mackay and Brown, from seeing them at the club at dinner parties. I was in the gambling room at the 1258 Bon-Air and saw Mr. Wait and Mr. Hartigan working in there in 1939. There was no gambling there in 1938. I knew some of the employees in the gambling room but did not pay any attention to them. I was a very busy man in my department. I am not sure I knew any of their names. I knew Bud Geary. He paid our bills in 1938 and 1939. I have not seen him since I left there at the end of the season of 1939. During most of the season of 1939 Roy Love was in charge of the kitchen late at night. He kept the place clean. I don't know Joe Conroy. I know Barney McGrath as a guest of the club. I was paid by check by Bud Geary every Tuesday. I never had any dealing with any of these men I have named except Mr. Wait. He was there every day during the seasons of 1938 and 1939. I have been in Louisville since October, 1939. I arrived in Chicago this morning. I came at the request of Mr. William R. Johnson and I talked with him at noon today.

EDWARD H. WAIT, being first duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 6321 North Francisco, Chicago. I have resided in Chicago forty-seven years and I am seventy-two years of age. I was raised on a farm and attended public school at Kirksville, Missouri, and later the State Normal School. I worked as a clerk in a dry goods store for about two years and then went to Wichita, Kansas, and worked as a clerk in a commission house for about two years. I came back to Kirksville, Missouri and started buying and shipping live stock. In 1893, at the time of the Columbian Exposition, I came to Chicago and became a professional poker player. Since that time, with some interruptions, I have operated gambling houses in and around Chicago. I served in the army for a year during the Spanish-American War and have been in the gambling business since. Defendants' Exhibit S-3 is a lease for the Dev-Lin Club made between John Engstler and myself May 1, 1935. I operated the Dev-Lin Club in the summer of 1935. Before I opened it I built a brick addition to the dance hall

that was on the property. Along in the fall I sold the property to defendant Sommers for \$5,000. I operated the club and I was the owner and no one else had any interest in it. After selling the club to Mr. Sommers I operated a restaurant at the Lincoln Tavern. No one was associated with me in the operation of this restaurant. At the same time defendant Hartigan was operating a gambling room at the Lincoln Tavern. I had no interest in this gambling room. I operated the restaurant at the Lincoln Tavern about three months and then I went out to the Villa Moderne near Highland Park and operated a gambling house there under an arrangement with the owner, Mr. Hutchins. No one was interested in this gambling house except Mr. Hutchins and I. None of the defendants in this case had any interest or connection with that gambling house. I operated there from 1936 to 1939. Mr. Boone Kelly assisted me. I became associated with the management of the Bon-Air Country Club in the spring of 1938. I learned that the club had been acquired by the present owners some time in the middle of December, 1937. Mr. Johnson and I stopped at Mr. Skidmore's office and he told us he had just bought the Bon-Air. He asked Mr. Johnson and me to go out and look at the property but we did not go for a week or two. During the first week or ten days in January, 1938, I visited the property. There was no one there except a watchman. About the middle of January I met Mr. Skidmore and Mr. Johnson there and Mr. Hendrickson, the 1260 watchman. There was a discussion about what should be done with the property but I do not remember the details. The club house was badly run down. There was some discussion of tearing off the back porch and making a garden there. Mr. Nadherny, the architect, and Mr. Davis, the decorator, were present at a later conversation. Mr. Johnson and Mr. Skidmore decided to build an addition about 50 by 60 feet. It was arranged that I should look after the detail work at the Bon-Air. Mr. Johnson and Mr. Skidmore made this arrangement with me early in the spring of 1938. Prior to the club season the addition was built and I made contracts for a bar and dishes and silver ware and kitchen utensils. During the course of the construction Mr. Skidmore and Mr. Johnson were there two or three times a week. I had a conversation with Mr. Skidmore about the purchase of the bar. I had prices from Liquid Carbonic and from Brunswick-Palke and Mr. Skidmore thought we should buy a bar from Liquid Carbonic.

I placed the order at around \$14,000 about the first of April. Mr. Skidmore gave me \$7,000 to pay on the contract and I don't know how the balance was paid. During the month of May Mr. Skidmore and Mr. Johnson were present and had conversations with the decorator. Along in the latter part of May the decorator suggested putting some family shields in the bar room representing the names Skidmore, Johnson and Wait. This was approved by the three of us and the shields were put on the bar room wall. On opening night Mr. Skidmore gave a dinner party at the club and Mr. Johnson was there greeting his friends. I don't think any of the other defendants were there. During the time I was there I saw trucks on the premises marked "Sunny Acres Farm" and some "Pine Tree Farms" and some "Bernstein & Skidmore." The Skidmore is the William R. Skidmore about whom I have been speaking. These trucks were hauling materials to the club property and hauling gravel and rubbish away from the property. Mr. 1261 Skidmore is the owner of the Pine Tree Farms. Trucks from this farm delivered poultry and milk to the club. Both Mr. Skidmore and Mr. Johnson were around the club three or four days a week during construction. I was there every day. A corporation was organized and I was given twenty-five per cent. of the stock for management of the club. Mr. Johnson and Mr. Skidmore gave me this stock. An arrangement was made between the corporation and the owners under which they were to get a percentage of the net profits for rent. Mr. Joseph Spagat was employed as the catering manager. During the operation of the club in 1938 Mr. Johnson would be there nearly every day and night for two or three hours. Mr. Skidmore would be there a couple of times a week. I don't remember any special conversation I had with these men during the operating season. I got the money to pay the bills from Mr. Johnson and Mr. Skidmore. They were supposed to pay 50-50. I got money from both of them from time to time. I advanced some money during 1938 and I was later reimbursed by Mr. Johnson and Mr. Skidmore. I was connected with the operation of the Bon-Air Catering Company during 1938, 1939 and 1940. In 1939 we did some more building. There was excavating done in the fall of 1938 and then a locker room was built on and the kitchen was extended. I paid the construction bills. I remember one instance when I paid Mr. Reedy, the plumbing contractor. Mr. Skidmore was present and he gave me three \$1,000 bills which I gave to Mr.

Reedy. One of the bills was the old form of currency and somebody remarked, "You must have got that out of the bottom of the box." Mr. Skidmore furnished me money quite often to pay construction bills. On one particular occasion I was on the roof with Mr. Skidmore and Mr.

Goldberg, the electrical contractor. Mr. Goldberg 1262 asked me for a payment on his contract and I did not have the money with me. Mr. Skidmore handed me \$5,000 in currency and I gave Mr. Goldberg \$2,500 of it. Mr. Goldberg and Mr. Reedy have testified in this case. I paid out about \$150,000 for construction in 1938, about \$25,000 of which was my own money. Mr. Skidmore and Mr. Johnson furnished the balance. They were supposed to contribute half and half but I don't know exactly the amounts contributed by each. Mr. Skidmore would hand Mr. Johnson money and Mr. Johnson would give it to me. In 1939 Bud Geary paid the construction bills. I paid nothing after 1938. In 1939 Mr. Johnson and Mr. Skidmore reimbursed me for the \$25,000 I had paid out. I know Leo Didier who testified. He worked for me at the Villa Moderne. I did not have the conversation with him which he related as having occurred at the Harlem Stables. Nor did I tell him that he would have to see Mr. Johnson about getting work at the Villa Moderne. Mr. Johnson had no connection whatever with the Villa Moderne and Didier did not say anything to me about having talked to Mr. Johnson about employment. I do not remember Mr. McGrath being in the Lincoln Tavern at any time when Mr. Johnson was there and I do not know whether the witness Schultz was employed there in construction work. Mr. Johnson had no interest whatever in the Lincoln Tavern when I was operating it. I don't remember Thomas Kehoe who testified here. He is right when he testified that I had charge of the roulette wheels at the Dev-Lin Club in 1935. I had charge of the whole house. I owned and operated it that year. I never had charge of the wheels at the Lincoln Tavern as he testified. I had nothing to do with the gambling house there. I might go in there once in a while but I had no interest in it. I know the witness William Rowlett but I don't recall having seen him at the Horse Shoe and I never 1263 operated the wheels there as he testified. I was never employed at the Horse Shoe and never had any interest in it. Rowlett worked for me at the Villa Moderne for a couple of years. He was wheel operator. Defendant Kelly never had charge of my roulette wheels at the Dev-Lin

and never worked for me or anywhere else except the dog track in 1927. I was never on a salary at the Villa Moderne and I never paid the employees as Rowlett testified. The cashier paid all wages. I remember the witness Nathan Cobb. He never saw me in charge of the wheels at the House of Niles. I was never there and do not know where it is. I was not at the Dev-Lin Club in the fall of 1936 when it was closed by the police. Mr. Johnson did not say to me and Jack Sommers on such an occasion, "It is all off, boys." I had a conversation with Agent Ruggaber some time in April or May this year. I did not tell Ruggaber that the \$5,100 reported in 1936 was salary from various gambling establishments. I received no salary from any gambling house in 1936. I think he asked me whether James Hartigan paid me a salary and I did not answer, "I can't answer that," but I answered, "No." I did tell him I couldn't identify which part was gambling profits from Villa Moderne and which was profits from the Lincoln Tavern. I had a second conversation with him along in May, 1940, when he asked me about the Carl Laemmle checks. I told him that Mr. Laemmle had given me these checks to pay gambling losses but that I did not win all of it because there were others in the game. Mr. Laemmle is dead. He was a motion picture operator from Los Angeles. I had known him twenty years or more. He was in Chicago and asked me to deal faro bank for him. I responded to the call and went to the Drake Hotel taking a faro bank lay-out with me. Mr. Laemmle and two other gentlemen played. I dealt the game. Mr. Laemmle lost and the rest of us 1264 won. Mr. Sommers cashed Mr. Laemmle's checks for me. He had no interest in them and did not know where I got them. None of these defendants knew about this game with Mr. Laemmle and none of them had any interest in it and none of them got any part of the winnings. The Mr. William R. Skidmore about whom I have testified was a defendant in this case when it started and he was dismissed.

Cross-Examination by Mr. Plunkett.

I think Mr. Skidmore is under indictment in another case for income tax evasion. I know there was an investigation of his income tax going on about a year ago this summer. The first time I have told anyone about the rela-

tions of Mr. Skidmore and Mr. Johnson at the Bon-Air was today from the witness stand. I told no Government Agent anything about Mr. Skidmore. I did not tell Agent Ruggaber about Skidmore having a half interest in the Bon-Air. I have known for three or four years that he did have a half interest there. I do not know anything about Mr. Skidmore's interest in gambling houses. I know he had no interest in mine. There is no Skidmore account on the books of the Bon-Air. I cannot explain why his name does not appear on the books. He said he did not want it there and Mr. Johnson said not to put Mr. Skidmore's name on the books. I don't know the reason. The first time the Bon-Air was mentioned to me was at Skidmore's junk yard. I had known Skidmore for thirty-five or forty years at that time. There was no particular reason for us being at his place on that day. Mr. Johnson and I just drove up there. Mr. Johnson had not mentioned the Bon-Air deal to me before that. Mr. Skidmore wanted us to go out and look at the property to see what we thought could be done with it. There was nothing said about a gambling house at the time. We were talking about fixing it up as a night 1265 club. Mr. Skidmore told us that he had bought the property and he was asking Mr. Johnson and me to go out and see what could be done with it. The discussion was to the effect that Mr. Johnson and Mr. Skidmore would own the property and I was to have an interest in it. Mr. Johnson said he knew nothing about the purchase until Skidmore told him. There was nothing said about Johnson paying for half of the land at this meeting in December, 1937. I drove out to the property first around the 10th of January, 1938, and a week or ten days later I met Mr. Skidmore and Mr. Johnson there. At this first meeting with Skidmore and Johnson at the Bon-Air nothing definite was decided. I was not employed at that time. I had done nothing since the season was closed at the Villa Moderne, the latter part of August, 1937. I have no record of the employees at the Villa Moderne. I never kept any. Mr. Hutchins, the proprietor, kept the Social Security records. The father and the two sons owned the property and I paid them twenty-five per cent of the winnings of the gambling house for its use. One of the Hutchins boys worked in the gambling house and we kept track of the business together. There was a sheet made up every night which showed the result of operations. It was just a blank sheet on which we

wrote what money was paid out and what money was left in the drawers. There was a record kept in a small book by Francis Hutchins. This was only a record of winnings and losings. It would be the total of the daily sheets. Pay-out slips were used. They were torn from perforated sheets in a pad. The same amount was written on the stub as was written on the pay-out ticket. The cashier's pay-out sheet and the stubs were checked against each other. My manager, Boone Kelly, would make out the tickets and Francis Hutchins would make the pay-outs. At the end of the day we could check the stubs against the pay-out sheet and know exactly where we stood. Boone Kelly was the 1266 floor man. There were dealers at the wheels. When a player won the dealer would call out to Kelly. There was no money at the wheels except what went into the drawer. They did not pay any money out of the drawer. Patron's money paid for the checks was put into the drawer and was later counted. From time to time this currency was taken to the cashier and turned over to him. Usually this was not done until we closed up. The money in the drawer had to correspond with the checks that had been sold at the table. The pay-out slips told how much had been paid out during the evening. The total amount of money in the drawer at the wheel was put on the pay-out sheet. After we had figured up the result the total was noted in our little book and then the sheets were thrown away. This was just a little notebook about 2 by 4 inches. Sometimes I would not be there for a week and then I would put down in my book in one figure what had been won and lost for the whole week. I had a new book for each year and I would throw the old one away. I kept the book until I made out my income tax and then I might throw it away. I don't know whether I now have any of these books at home. I also kept addresses and telephone numbers in this little book. I settled with Hutchins from time to time. There was no set time for settlement. I carried my little book around with me but I don't know whether I have it yet or not. I filed an income tax return last March. I may have had the little book at home at that time. I made out my own return. No one helped me. I knew what my income was. I carried it in my head. I knew what I had given Mr. Hutchins. I gave him \$2,500 at one time, and either \$1,000 or \$500 the next time. I gave him a total of \$4,000 in three payments. After we made our entries in our little ac-

count books we destroyed the daily sheets at the
1267 Villa Moderne. We had no further use for them and
did not think anyone else would have. I never thought
about the Government wanting to see them. I could have
kept them but had no use for them. Hutchins kept records
similar to mine but I don't know what he did with them.
That is true every year I was running the Villa Moderne.
We had from four to six employees in the gambling room.
Occasionally at night we might have some extra men work-
ing there. I usually had three dealers and two or three
extra men on Saturday night. It takes one dealer at a
wheel but you may use two men to the wheel. In addition
to wheels I had a hazard table. I did not have slot machines.
We were usually open from the last of May until the first
of September. Generally I was at the Bon-Air only in the
evenings. Sometimes I would be there in the afternoon but
never in the morning. During the construction period I
was out there in the daytime. During the three years we
have operated I have been away from there very few eve-
nings during the season. I had charge of the gambling at
Bon-Air. Mr. Hartigan assisted me in looking after the
gambling room. He was the floor man in 1939. The gam-
bling room was not open in 1938 or 1940. There were sev-
eral men working in the gambling room in 1939. There were
wheel dealers and crap dealers. I hired most of these men.
They came in looking for jobs. They were not sent from the
D. & D. and the Southland and the Horse Shoe. When men
came out looking for jobs I picked what I thought were the
best men. I knew wheel dealers and I could pick them. I
did not know much about crap dealers. I did not know any
of these men because they had worked at the Horse Shoe,
the D. & D. or Harlem Stables. I know about every wheel
dealer in the country either personally or by reputation. If
I did not know the crap dealers I asked Mr. Hartigan about
them. He knew most of them but I knew very few.
1268 I have seen Mr. Sommers visiting in the crap room
at the Bon-Air but I do not know whether any of the
other defendants were ever there. I may have known de-
fendant Flanagan for ten or fifteen years. I saw him at
the Bon-Air once or twice. I was never very well acquainted
with him and I don't remember where else I saw him. I
have known defendant Creighton for two or three years. I
have seen him at the Bon-Air and I do not remember having
seen him anywhere else. I never had any business dealings

with Mr. Creighton or Mr. Flanagan. I have known defendant Kelly for thirteen or fourteen years since he worked for us at the Lawndale dog track. Later I saw him at Division and Dearborn. I don't have any idea what he was doing in the meantime. I have known defendant Hartigan for ten or twelve years. I think I met him at the dog track but I am not positive. He was not employed by us. I saw him again five or six years ago when he called on me at the Dev-Lin. I know that defendant Hartigan was connected with the Lincoln Tavern but I don't know of any other place. I have known defendant Sommers for five or six years since the time I opened the restaurant at the Lincoln Tavern. I had not known him prior to the time I sold him the Dev-Lin Club. I have known defendant Mackay about a year. I think I saw him for the first time at the Bon-Air. He was sitting at the table eating dinner and he was introduced to me. I have known defendant Brown since about April this year. I did not know him at the currency exchange. I took a couple of checks in there and Miss Downey cashed them for me. I have known defendant Johnson for fifteen years, say since about 1925. We did not start in business together until 1927. I do not remember where I met him. I remember seeing him one night at the 1269 Sherman House. It was shortly after that we began negotiations which led to the opening of the Lawndale dog track in 1927. We leased the land there and we built the dog track and the stands. I invested about \$50,000 and Mr. Johnson about \$100,000. That include' our bankroll. There was \$23,000 in the plant. We operated the track about six months. We later got our money back by an arrangement with the Hawthorne dog track. We did not operate our track in 1928 nor thereafter. There wasn't business enough for two dog tracks. We had an agreement with the Hawthorne dog track.

Q. And what was this agreement?

Mr. Thompson: We object to this as improper cross-examination and as immaterial.

The Court: Overruled.

The Witness: We got a percentage from the Hawthorne.

Q. How much per week, Mr. Wait?

Mr. Thompson: We object to this as improper cross-examination.

The Court: The only thing is to show that Mr. Johnson and the witness were associated, if they were. Is that the purpose?

Mr. Plunkett: Yes.

Mr. Thompson: He testified they were.

The Court: Let us go, let us get it over.

The Witness: \$9,000 a week.

A. How long did that continue?

Mr. Thompson: We object to that as improper cross-examination.

The Court: Overruled.

Mr. Thompson: That was back in 1927 or 1928.

Mr. Plunkett: You went back to 1898.

Q. How long did those payments come to you and Mr. Johnson?

A. Through the racing season.

Q. Was this a percentage basis on which you were getting \$9,000 a week?

1270 Mr. Thompson: We object to this as improper cross-examination.

The Court: Overruled.

A. Not a percentage. It was a flat \$9,000 a week. Mr. Johnson and I were partners until our lease expired in 1931. After that Mr. Johnson and I were not partners. I was either playing poker or doing nothing.

Q. Now how long did you and Johnson continue to get that \$9,000 a week?

A. During the racing season.

Q. Well, how long was that in months?

A. Five or six months.

Q. You say that is only five or six months you got \$9,000 a week from the Hawthorne track?

A. Yes, sir.

Q. Did you get anything but that \$9,000 a week?

Mr. Thompson: I object to this as improper cross-examination.

The Court: Overruled.

A. No, sir.

Q. Well, who made the arrangements with the Hawthorne track for this \$9,000 a week?

Mr. Thompson: I object to that is improper cross-examination.

The Court: Don't you think you have spent about enough time on that?

Mr. Plunkett: All right.

From 1930 to 1935 I was occasionally in business. I had a place on the North Side for a little while, about

120 Pearson Street. I had a wheel house there and a restaurant. I was there about a year. It was either in 1931 or 1932. I don't remember from whom I leased the premises. Mr. Samuel Cole was associated with me. After

I gave up this place I did not do anything for a while except gamble. I played poker in the Morrison Hotel principally. None of these defendants were associated with me. I just chanced to locate the Dev-Lin Club. I was looking for a location and I saw this place and went in and talked to the proprietor. I negotiated for a lease and later reconditioned the place and opened up. There was an old tavern and dance hall on the premises. I built an addition to the building and I put in new furniture. I let the contract to a builder named Walters. I don't know whether Roy Love worked there. The job cost me \$5,000. I first remember Roy Love working at the Lincoln Tavern. I think I had known him before that time. A new heating plant was put in at the Dev-Lin in the fall of 1935. I did not install it and I don't know who did. I don't know just when it was installed. I was not there. I sold the place to Sommers in the fall and I don't think I was informed that the heating plant was being put in. I had a couple of wheels and crap tables and a horse book operating at the Dev-Lin. My floor man was named George Edwards. I operated for two and a half or three months from May to August. The police closed us. I was not arrested. After the Dev-Lin was closed I did not do anything for three or four months. I could not make anything out of the Dev-Lin so I sold it when I had an offer for it. Mr. Sommers bought it. I had seen him before that time but I did not know him particularly. I don't remember whether he set the price or whether I did. I know we finally agreed on a price of \$5,000 which was approximately what I had invested. I was glad to get rid of it so I let him have it. I don't think there was any memorandum of the transaction or any receipt given. I told Engstler about the sale but I don't remember when. I went to the Lincoln Tavern in the fall of 1935. I continued there until the next May. I don't know whether I sold the Dev-Lin to Sommers before or after I opened the Lincoln Tavern. I had nothing to do with the Dev-Lin after I sold it. I do not recall making a deposit of \$363 for light contract for the Dev-Lin on January 2, 1936. I never saw Government's Ex-

hibit O-244 before. My signature is not on the back of Government's Exhibit O-243. I think I was living at 6123 North Francisco in 1935 and 1936. I do not remember receiving the check, Government's Exhibit O-243. If I did receive it I would have delivered it to Mr. Sommers. I don't remember ever receiving it. O-244 was never in my possession. I do not recognize the writing "M. D." on the back of O-243 and I never saw it before. I have never cashed a check with "M. D." as the endorsement. I don't know who signed that. I have never seen Government's Exhibit O-245. I don't remember that it ever came to my address. It never belonged to me. If it had come to my address I would have given it to Mr. Sommers because he owned the Dev-Lin in 1936. I went to the Lincoln Tavern in the fall of 1935. I had been out there years before. It was vacant. There was a lot of furniture in it. It had been a night club and had the usual equipment. I leased it from the receiver. I don't remember what rent I agreed to pay. It was around \$5,000 a year. I rented it from month to month. I was going to operate a restaurant and Mr. Hartigan wanted to operate a gambling house. I do not remember where we talked this over but it was before I leased the property. I opened up the restaurant there and Mr. Hartigan opened the play room. There may have been some alterations in the building. I think Roy Love did the work. I don't know how he came to get the job. I did not get him at the House of Niles. I was never there in my life. I think Mr. Hartigan gave him his instructions about the changes that were to be made. The restaurant needed no changes. I used 1273 the equipment that was there. There was a bar and 700 or 800 chairs and some tables around there. I cleaned up the place and opened up the restaurant. Mr. Hartigan paid Mr. Love for what he did in fixing up the play room. There were 200 tables there in storage and I used those. I do not remember buying any new ones. I know almost that I did not. I operated from December, 1935, to May, 1936, and I just ran the restaurant. I served meals and liquor. A young man by the name of Atlas set up some books for me. I kept the books part of the time and I don't know who else kept them. I did not hire a bookkeeper. I knew who was keeping the books at the time but I don't remember now. Roy Love had nothing to do with my restaurant except helping out once in a

while. I did not pay him a salary. I remember bringing my books down to Agent Ruggaber. I do not recognize the signature of Roy Love on Government's Exhibit O-247. That may be part of the records I brought down to Ruggaber. Government's Exhibit O-246 looks like a report for January, 1936, of the Lincoln Tavern. That may be a report that was made by Mr. Atlas. I have not seen the reports for four or five years. I do not remember saying to Ruggaber in May that I did not know who made the reports. I may have said to him that I did not remember who kept the books. I did not say to Ruggaber that I did not know to whom the auditor's report on the restaurant was submitted. I made a profit out of the business. I think about \$1,200 after depreciation. I left the Lincoln Tavern because I leased the Villa Moderne. That was in the summer of 1936. I have been there every summer since. The operating period was usually from June 1 until September 1. I was usually idle except during these months. I did not sell the Lincoln Tavern. I just walked out of it and let Hartigan have it. I had very little investment there, maybe \$200. I know the equipment used there did not come from the Horse Shoe. I do not know that there is anything in the records showing that certain items did come from the Horse Shoe. I have not seen those records for five years. While I was at the Lincoln Tavern Hartigan paid the rent. The only investment I had made at the Lincoln Tavern was replacement of broken dishes. I had not paid Love a cent for making alterations in the place. I don't know what Government's Exhibit O-248 is. I don't recognize it as being part of the records of the Lincoln Tavern that I delivered to Agent Ruggaber. The item there, "Net worth, restaurant and bar equipment (Horse Shoe) \$500," does not refresh my recollection about anything.

Q. Do you know who typed that part of the record?

Mr. Thompson: We object to the assumption that it is part of any record.

Mr. Plunkett: We have proven what it is.

The Court: Do you expect to show it is part of the records?

Mr. Plunkett: We will.

The Court: Well, with that undertaking the objection will be overruled.

The Witness: I operated the Villa Moderne in the sum-

mer of 1937 and 1938 and 1939. I did not return any equipment from the Lincoln Tavern to anybody. Everything that was there when I came was left there with Hartigan. My signature is on Government's Exhibit O-249. I did not sign for any telephone at the Lincoln Tavern in November, 1936. I think I signed for one there in 1935. I was not there in the fall of 1936. I did not sign a telephone contract on November 12, 1936. The signature on the back of that card looks like my signature.

I don't think it is my signature on Government's 1275 Exhibit O-250, but I would not say that it is not.

I don't remember signing for telephone number Morton Grove 1810 on November 12, 1936. It is possible when I turned the restaurant over to Hartigan I went back and signed a new telephone contract for him. If I did it was only as an accommodation to Hartigan. I don't say that I did. I was called either at my home or the Villa Moderne by some member of Mr. Laemmle's party and asked to come to the Drake Hotel and deal faro bank for them. I do not remember who called me or where they called me. I took a faro bank lay-out with me and went to Mr. Laemmle's suite at the Drake. I had often gambled with Mr. Laemmle. We gambled all that night and into the next day. It was some time in May, 1936. I did not know the names of the other gentlemen who were with Mr. Laemmle. I got there about 8 or 9 o'clock in the evening and we played all night and through the next day. I do not know how much money I had with me but I had probably \$2,000 or \$3,000. When the game was over Mr. Laemmle gave me an I. O. U. for what he owed and he sent these checks, Government's Exhibits O-219 to O-227 back from California. I think the total of the I. O. U.'s was \$4,525. That was not my winnings. Two other men playing were also winners. They won \$600 or \$800. What I won would be the difference between what Mr. Laemmle lost and the others won, less my expenses. I had William Martin with me as a dealer. I do not remember what I paid him but I paid him liberally. I remember one of the men who was present was named Van Runkel. I do not know his first name. I do not remember a Mr. Ross, who was Laemmle's secretary. This game was not played at the Villa Moderne but was played at the Drake Hotel. I do not recall a telephone conversation from Ross to Laemmle while Laemmle was at the Villa Moderne. When

I received these checks from California I had them cashed one at a time as they became due. Defendant Sommers cashed most of them for me. I don't remember where 1276 I delivered the checks to him and received the cash.

He cashed them one at a time. When I received the cash I put it in my pocket and the chances are I took it to the vault. I do not remember whether I made any memorandum of this gambling transaction.

Q. When you came to make up your tax return for 1936 did you have any record of that transaction?

Mr. Thompson: We object to all this as improper cross-examination and immaterial.

The Court: Overruled.

A. I don't remember whether I did or not.

Q. Do your winnings from that transaction appear in your tax return for 1936?

A. Yes.

Government's Exhibit R-82 is my return for 1936 which was prepared by Radomski. I did not give him figures from the Laemmle transaction as a separate item. I just gave him the total of my net income for the year. I did not put on my return the words, "Various establishments, Chicago and vicinity," nor did I tell Radomski to put that on there. The item, "Net profit from business, \$7,628.87," was from gambling operations and the Lincoln Tavern restaurant. On the back of the return it appears that the item all refers to the restaurant business but that is an error. I did not tell Radomski when I gave him the information for the return that I was the manager. I do not remember ever seeing a copy of the return after he filled it in. Government's Exhibit R-81 is my return for 1935 which Brantman prepared. He had made returns for me before. That shows net profit from business, \$5,282.45. That was the year I was operating the Dev-Lin so it must represent the profits of that business. I know nothing about the items on the back of the return. 1277 I gave Mr. Brantman the figures and he was a former government employee and he ought to have known how to make out the return. I didn't. Government's Exhibit R-83 is my return for 1937 which was prepared by Radomski. The item "Miscellaneous speculations, \$7,175," was my winnings at the Villa Moderne. Government's Exhibit R-84 is my return for 1938 which I prepared. The item "Miscellaneous speculation, \$7,250," was

my winnings from the Villa Moderne. The business there was about the same in 1937 and 1938. Government's Exhibit R-85 is my return for 1939 and the item \$12,000 represents my income from the Villa Moderne. I made out the return and used the even figure. Probably it was not exactly that. The chances are it was not that much. It was not salary. I listed it on the wrong line. Mr. Johnson and I talked to Mr. Hartigan about helping out at the Bon-Air gambling room. Nothing particular was agreed on as compensation for Hartigan. I do not know whether he drew a salary. I never drew a salary at the Bon-Air. The salary of floor men at the Bon-Air was \$15 a day. I think Hartigan had an interest in the Bon-Air Catering Company which operated the gambling. I don't know whether he received any pay as floor man. He had twenty shares in the Bon-Air Catering Company and I had twenty-five. I never drew any salary in the three years I was at the Bon-Air. I do not know who was operating the Harlem Stables while Hartigan was at the Bon-Air. I never talked to Hartigan about it. Hartigan did not ask me for a job nor did I call him to come and go to work. He had an interest in the Bon-Air Catering Company. I am president of the corporation. It has no interest in the land or the buildings. Mr. Skidmore and Mr. Johnson own the land and the buildings equally. The income from the gambling went into the books with the other receipts of the catering company. I paid no 1278 attention to the books. The auditor can tell you how it was entered. The bankroll was kept in the safe until the gambling room closed up and then the profit was turned in to the catering company. Mr. Black was the auditor in charge of the books. He was given the amount to enter. The cash was in the safe and it was used to pay bills. The safe where the cash was kept was in the cashier's office. The profits from gambling in 1939 were about \$22,000. The only record kept in the gambling room from day to day was the cashier's sheets. Tickets were issued for pay-outs and money taken in at the dice tables was kept in a box and then turned in to the cashier. At the end of the day the cashier's sheet would show the results of operation. I do not know where these sheets were kept. They were filed away in the office. Either Mr. Hartigan or I would take the sheets up to the office and put them in the safe. They stayed there until we closed

up at the end of the 1939 season. Then I don't know what became of them. They have been taken out of the safe. I heard about a subpoena being issued for the production of the Bon-Air books. I don't know who ordered the supplies for the gambling room at the Bon-Air nor where they came from. We had little pencils on the golf course which bore the name "Bon-Air Country Club." I bought a supply of them from a dealer near DesPlaines. I don't know anything about pencils being bought from Conroy at 4715 Irving Park. I know Joe Conroy but I do not know his business. I knew him about fifteen years ago when he worked for me at the dog track. He was then about twenty-one years old. I have not seen him more than three or four times since. Government's Exhibit O-125 looks very much like Joseph Conroy but he was very much younger when I knew him. He was a guest at the Bon-Air once I think. I had no business transactions at 4715 Irving Park. I have never been in the building either on the first floor or the second floor. I do not know whether Conroy was in business in that building. I never knew him under the name of Morgan or Vase. The Bon-Air Catering Company cashed its checks at the Continental Illinois National Bank where it had its account. I did not handle the details. Mr. Geary handled most of the money and checks. He usually turned the checks in to the cashier. The checks from the gambling room would show up as a part of the proceeds of the catering company along with the restaurant. Mr. Hartigan okayed some checks and I okayed some. I did not watch every check so I do not know just what happened in every case. I don't know whether any Bon-Air checks were cashed at the Lawrence Avenue Currency Exchange but I don't think they were. I never took any down there nor did I ever send any down by the Downey boys. I never saw a Downey boy at the Bon-Air. I cashed at the Lawrence Avenue Currency Exchange a couple of my checks which I took in at the Villa Moderne.

Q. Why did you select those couple to take there?

A. Maybe three or four.

Mr. Thompson: We object to this as improper cross-examination.

Mr. Plunkett: It is no such thing.

Mr. Thompson: We are wasting a lot of time.

The Court: Overruled.

I had checks to cash and I took them down to the Lawrence Avenue Currency Exchange. I did not know Brown when I went in there and I don't know whether he knew me. I just went in there because I knew I could get a check cashed. There is an exchange at Devon and Western which is closer to my home. John W. Geary was cashier of Bon-Air Catering Company. He had no office in the corporation. He handled all the money. Mr. 1280 Johnson was treasurer. Mr. Hartigan and I handled the money from the gambling room. We did not turn it over to Geary. Geary's office was on the second floor. The office was used by all of us more or less. I don't think Geary made any entries in the books of the company. Neither I nor Mr. Johnson okayed the bills that Geary paid. Mr. Geary checked the cash registers at night. Roy Love was construction man at the Bon-Air. He was not an employee of the Bon-Air Catering Company. He had the Lightning Construction Company and as far as I know he was the company, doing business under that name. I don't know that John Geary had any connection with it. I know nothing of the business transactions between the Bon-Air Catering Company and the Lightning Construction Company. The architect made the contracts. I have given Roy Love money to meet his payroll quite often in 1938. I did not give him any money afterwards. I think the money I gave Love was entered on the books of the catering company in 1938. I don't know whether Love was on the payroll. I never deposited any funds in a bank account under the name "Lightning Construction Company" nor did I give Love any money for that purpose. I know nothing about a bank account out at Deerfield. I was the president of the Bon-Air Catering Company but Mr. Nadherny took care of bids for construction work. Love had no connection with the company. I don't know where Love and Geary are now. I have not seen Geary since last spring. My only interest in the corporation is the twenty-five shares issued to me. I did not pay for them. Mr. Skidmore and Mr. Johnson did. Mr. Johnson has fifty-four shares, Mr. Hartigan twenty, and Mr. Dishenger one. Mr. Hendrickson has one now and I have only twenty-four. One was issued to Hendrickson so that he could take out a liquor license.

Dishenger is dead but the share still stands in his 1281 name. Hendrickson is a watchman at the Bon-Air and I suppose he is the real owner of the share

issued to him. It is not worth very much. It is \$100 par value. There is no stock standing in Skidmore's name.

Q. Well, are any held in other names that are really his?

Mr. Thompson: We object to calling for legal conclusions, and this is improper cross-examination.

The Court: Let him answer.

The Witness: I don't know. I have stated all the shares and the names they are under.

I paid out \$25,000 of my money during the course of construction in 1938. I used it to buy glassware, china ware, silverware and kitchen utensils. I took the money from my box at the First National Bank and paid bills. I was downtown buying and I had no credit at wholesale houses and so I paid cash. Mr. Skidmore and Mr. Johnson reimbursed me for the amount I laid out. Mr. Johnson gave me the cash and he settled with Mr. Skidmore. Twenty-five thousand dollars was paid to me in currency, mostly in \$100 bills. Mr. Johnson and Mr. Skidmore were equal owners of this property and there was nothing said about the share I was to have when the improvements were started. When the corporation was formed and the stock was issued was the first time I knew what interest I was to have. I don't remember just when that was but I think around May, 1938. I do not remember who was present when the twenty-five shares were issued to me. I signed the certificates. I own the twenty-five shares which were issued to me. The twenty which were issued to Hartigan are in his name. I have known Skidmore for about thirty-five years. The first time I learned that the Bon-Air land was bought was the time Johnson and I went down to his office. I was at Skidmore's office 1282 quite often. Mr. Johnson and I stopped in there together perhaps once a week. Mr. Johnson was there almost every day. After I became connected with the operation of the Bon-Air I seldom went to Skidmore's office. I had something else to do. Our conversations at Skidmore's office were just casual and social. I don't think I ever saw any of the other defendants there. I used to see a lot of people around there. I recognized some of them—Mr. Bernstein and Mr. Alexander and Mr. Goldstein and some other people whose names I do not remember.

Q. Didn't you see a long line of bookmakers from Chicago out there in Skidmore's junk yard?

Mr. Thompson: That is improper cross-examination and immaterial.

The Court: He may answer.

The Witness: I do not know many bookmakers around Chicago. In addition to running a junk yard Skidmore was a farmer. I don't know any other business in which he was engaged.

Q. Don't you know that all the gamblers in Chicago had to pay money to Skidmore to operate?

A. I don't know that.

Mr. Thompson: I object.

The Court: Do you expect to prove that?

Mr. Thompson: Suppose he did.

The Court: Do you expect to prove it?

Mr. Plunkett: Well, if it becomes necessary.

Mr. Thompson: I move to strike the question and answer and ask that the jury be instructed to disregard any such assertions of counsel.

The Court: No, I don't think I will. The Government did not bring Mr. Skidmore into this case. Motion denied.

The Witness: I know nothing about money being paid by gamblers to Skidmore. I have known him for 1283 thirty-five or forty years and I do not remember ever seeing any of these defendants at his place other than Johnson. He was out there regularly. I don't know whether Skidmore owns the building at 4715 Irving Park Road nor whether Johnson is a partner with him in the ownership of that building.

1284 SAMUEL HARE, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 5200 Sheridan Road, Chicago. In the early part of 1937 I had some negotiations with respect to the purchase of the Bon-Air Country Club. These negotiations were with Mr. Becker, who represented the seller. I represented Mr. William Skidmore. My first conversation was at the State Bank and Trust Company in Evanston. It was around April 1937. No one else was present except Mr. Becker and myself. I asked him if he wanted to sell the property and he said that he did but would

have to get in touch with the bondholders. About two or three weeks later he called me and I went in to see him. I made him an offer of \$60,000.00. Prior to that time I had talked with William R. Skidmore about the offer. This conversation was in Mr. Skidmore's office; no one else was present. It was around the latter part of May 1937. I told Mr. Skidmore I had made an offer for that property for \$60,000.00 and that Becker had said that he didn't think it could be bought for that. Mr. Skidmore said we will let the offer stand. About two weeks later I took Mr. Goldstein to the Evanston Bank and had a conversation with Mr. Becker. Mr. Becker said that he did not think the bondholders would be willing to sell for \$60,000.00. Goldstein said that if they made up their mind to take that amount he would put the money up in escrow. I had no further part in the negotiations.

Cross-Examination by Mr. Hurley.

I am a caterer. My last place of business was at the Copeland Hotel. I was there about a year. Prior to that I had the Dellshore, which is a restaurant at Dempster and McCormick. I was there throughout the summer of 1939. Prior to that I was at Miami, Florida.

About seven years ago I operated the Dells out on Dempster Street. It was a restaurant. I had nothing to do with the gambling that was carried on there. A couple of fellows from Chicago had that concession. I do not remember who they were. I operated the Dells restaurant for about eleven years. I have known Skidmore for many years, probably twenty. I used to see Skidmore about Blum's Cigar Store on Dearborn Street. I have been out to his junk yard perhaps five times during the period I have known him. I have never been in the real estate business and I have no license as a broker. I am just a cafe man.

Examination by the Court.

I have told you all I know about the Bon-Air deal. I have told you all that was said between Mr. Skidmore and me. I have no office. My last place of business was the Dellshore, a road house at Dempster and McCormick. I was there from March to July 1939. Before that I had a restaurant and bar in the Copeland Hotel for about six

months. For probably two or three years I was out of business. Prior to being out of business I had the Dells until it burned down. I used to operate the Schiller Cafe at 31st and Forst.

REX DAVIS, who had been previously sworn, testified as follows:

Direct Examination by Mr. Thompson.

I was the painting contractor at the Bon-Air Country Club. During my work there I saw Mr. William R. Skidmore around the premises inspecting the construction that was going on. I would see him there two or three 1286 times a week. I have visited his farm known as Pine Tree. I have seen the Pine Tree Farm's trucks at the Bon-Air Country Club hauling gravel and dirt. I had a conversation with Mr. Skidmore and Mr. Johnson and Mr. Wait about the family name shields that were placed in the bar at Bon-Air. Mr. Skidmore expressed surprise that there should be three stirrups on his shield. These men all approved putting the shields on the bar-room wall. During the three months I was working at Bon-Air I saw Mr. Skidmore talk with Johnson and Wait and Nadherny.

Cross-Examination by Mr. Hurley.

I saw other people at the Bon-Air besides those I named. I do not know whether Johnson had hired the Pine Tree farm trucks and was paying for them. I do not know what the stirrups on Skidmore's shield signified, but it is a matter of record at the Newberry library. I do not know whether those stirrups had any relation to the bookmakers here in Chicago.

ROBERT GOLDBERG, who had been previously sworn, testified as follows:

Direct Examination by Mr. Thompson.

I did the electrical work at the Bon-Air Country Club in 1938 and 1939. I saw Mr. William R. Skidmore there on numerous occasions and had conversations with him pertaining to the different work we were doing there. I would see him at the Club two or three times a week

during the construction period in both years. On one occasion Mr. Wait gave me \$2500.00, which was part of \$5,000.00 that Mr. Skidmore gave Mr. Wait in my presence. Around May 12, 1938 I asked Mr. Wait for some money on our contract. He turned to Mr. Skidmore, who was standing with us on the roof and said, you 1287 will have to give me some more money and Skidmore handed Mr. Wait \$5,000 and Mr. Wait in turn gave me \$2500. That occurred on top of the pavillion at the Bon-Air. I have known William R. Johnson for twenty-five years. I know the people with whom he comes in contact in the City of Chicago. I know his general reputation in this community for truth and integrity. It is very good. I know Mr. Johnson's general reputation in this community for honesty and fair dealing and it is very good.

Cross-Examination by Mr. Hurley.

I have known Mr. Johnson for twenty-five years. I live at 6235 North Bell. I have done work for Mr. Johnson at his farm. It amounted to about \$7500, which he paid in currency. I have done work in gambling houses for the different owners. Last week I talked to Mr. Thompson about my testimony. He asked me to come in to his office and I did. When I got there there were several men there, some of whom I knew and some I did not know. I did electrical work in some of these gambling houses. I did some at the Horse-Shoe at Lawrence and Kedzie and some at 4020 West Ogden Avenue. The work at 4020 was done about eight years ago. I do not remember who made the contract. I did not talk to Johnson about the job. I certainly know something about Mr. Johnson's reputation. I never heard that he was reputed to own all of these gambling houses. I knew he gambled around these places.

S. E. DONLON, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 3065 Palmer Square, Chicago. I am a physician and surgeon and have been practicing in Chicago since 1895. I have known William R. Johnson since his birth. I know his general reputation in the community for 1288 truth, honest and fair dealing. It is good.

No Cross-Examination.

JOHN DENNISON, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 4200 Sheridan Road, Chicago and have resided in the City for seventy years. I am a Clergyman. I have known the Johnson family for seventeen years and I have known William R. Johnson very well for the last five years. I know his general reputation in the community for truth, integrity and fair dealing and it is very good.

No Cross-Examination.

MRS. KATHLEEN McCARTHY, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I now reside at 1420 Sherwin Avenue, Chicago. I have resided in Chicago since 1893. I have an art store in Evanston and have been in business for eighteen years. I have known the defendant William R. Johnson since he was born. I know his general reputation in this community for truth, honest and fair dealing and it is very good.

No Cross-Examination.

EUGENE E. JOHNSTON, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I live in Wilmette. I am in the bulk gasoline business. Our firm is Tank Car Stations, Inc. I have known the defendant William R. Johnson about eight years. I know his general reputation for truth, honesty and fair dealing and it is very good.

1289 *Cross-Examination by Mr. Hurley.*

I live at 1313 Ridge Road, Wilmette. I first met Mr. Johnson at his home on Hazel Avenue. I was at that time residing in Buffalo, New York. I am in no way related to the defendant.

ED McMAHON, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I am a farmer and I reside near Lombard, Illinois. I have known the defendant William R. Johnson about three and a half years. He farms right west of me. I know his general reputation in the community for truth, honesty and fair dealing and it is very good.

Cross-Examination by Mr. Hurley.

All I know about any other business Mr. Johnson has than farming is what I read in the newspapers lately. I never saw Mr. Johnson do any plowing on his farm.

KARIN WALSH, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 1008 South Gunderson Avenue, Oak Park and I am in the hotel business. I am at present associated with the Georgian Hotel in Evanston, the Seneca Hotel in Chicago, the Barry Apartments and other smaller ones. I was President of the Hotel Association for two terms and I am now a director. I have known William R. Johnson for fifteen years. I know the people of the community with whom he associates. I know his general reputation in Chicago for truth, honesty and fair dealing and I would say it is very good.

No Cross-Examination.

1290 WILLIAM R. THELE, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at Park Ridge, Illinois and I am now with Sprague, Warner & Company. Prior to that I was Vice President of Durand-McNeil-Horner Company. They were wholesale grocers. We did business with Bon-Air Catering Company. The first purchase was made in May 1938. Defendants' Exhibits J-7-A, B, etc. are cards from our ac-

counts receivable ledger. Those records are kept in the regular course of business and the entries made truly reflect the several transactions. The records are now in my custody as a liquidator.

Mr. Thompson: We offer the exhibits in evidence.

Cross-Examination by Mr. Hurley.

The records were made by the bookkeeping machine operators. As Vice President of Durand-McNeil-Horner Company I was in charge of the operations of the Company. I had nothing to do with taking the orders shown on the exhibits. The salesman was Mr. Schwartz. All accounts were under my supervision. This account was referred to me by the Credit Department and I passed on the credit.

Mr. Hurley: We object to these exhibits. They are immaterial.

Mr. Thompson: The only part we are offering in evidence is the name in which the account was carried.

Mr. Hurley: I am objecting to that and everything else. It does not tend to prove anything material to this lawsuit.

1291 Mr. Thompson: This evidence is much like the records offered by the prosecution, especially those of Nationwide News Service.

The Court: The objection is overruled. They may be received.

Mr. Thompson: So there will be no question about it, I offer only the name of the account. I doubt whether the pencil memorandums are proper to be in the record. Just as I have objected to similar memorandums on the Nationwide News books.

The Court: You can offer part of it. If the Government wants to offer any other part of it it may go in.

Mr. Thompson: That is the part I am offering and my offer is limited to that.

The Court: Very well.

MOE SINGER, being duly sworn, testified, as follows:

Direct Examination by Mr. Thompson.

I reside at 7957 Oglesby Avenue, Chicago. I have resided in Chicago for fifty-seven years. I am a grain broker, with offices in the Board of Trade Building. I have known the defendant William R. Johnson for twenty years. I have

seen him shoot craps. I saw him in action on a train going to Detroit to a prizefight in 1929. A crap table was set up in the baggage car. This was in July. It was the Vincent Dundee and Jackie Fields fight. My brother came to the drawing room on the train and told me a big dice game was going on. If I wanted to see a show to go in there. I went back to the car and I never saw so many people around a table and so much money changing hands. Johnson was taking all the bets. It lasted until we got to Detroit.

1292 All I could see on the table was fifty and one-hundred dollar bills. Johnson was taking all bets. I also saw Johnson shooting craps on a train going to New York to the Louis and Baer fight in 1935. A crap game was in a baggage car right off the diner. There was a large crap table in there. Johnson was taking all bets. I never saw so much money, one hundred dollar bills, fifty dollar bills and twenties. I don't know how many people were betting to Johnson in that game, ten or twelve at least. I heard the game lasted until we got to New York. I was in there about an hour and a half. I also saw Johnson shoot craps at the Congress Hotel at some sort of a carnival. I am not a crap shooter myself. I have known Johnson for twenty years and I know people with whom he associates in the City of Chicago. I know his general reputation for truth, honesty and fair dealing. It is the best.

Cross-Examination by Mr. Hurley.

I am with the Uhlman Grain Company and have been for fourteen years. I have seen Mr. Johnson around Chicago for twenty years. I once visited at his house about eleven years ago. I have seen him at sporting events. All I know about the crap game on the train going to Detroit was that Johnson was in the game taking all bets and that there was a lot of money around there. The same is true of the game on the train going to New York. I know the train we had in 1929 was a special but I do not remember whether the 1935 trip was on a special. I answered that I knew many persons with whom Johnson associates in Chicago. I did not know that he associated almost daily with William R. Skidmore. I know who Skidmore is and I know where his place of business is located.

1293 MRS. ANNA HOMAN, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 3629 North Keeler, Chicago. I am a house wife. I was at one time employed by William Goldstein as a stenographer. It was from January 1927 until January 1938. I was receptionist and general stenographer. Sometimes there was another stenographer in the office. There were six lawyers in the office at one time and when I left there were four, Isador Goldstein, William Goldstein, Clarence Shaver and William Peacock. I worked for these four lawyers. Government's Exhibits E-69 and E-70 are deeds which I signed at the request of William Goldstein. I did not know the grantee William R. Johnson when I made the deed. I do not remember ever seeing Mr. Johnson until I saw him out here in the hall today. I don't remember ever seeing him in Mr. Goldstein's office. I know nothing about who paid the money for the property conveyed by these deeds. I knew William R. Skidmore. He came into Mr. William Goldstein's office on several occasions during the period that I was working there.

No Cross-Examination.

ALBERT TATGE, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at Des Plaines. I formerly owned the property known as the Green House at the Bon-Air Country Club. I sold this property to a man named William Goldstein in April 1938. A short time later I sold William R. Skidmore some evergreens. The trees had been inspected before we agreed on the price. The trees were moved and hauled away in Pine Tree Farm's trucks. When I sold the house

there was a pool table in the basement. When I was 1294 dealing with Mr. Skidmore about the trees I told him

I would like to sell the pool table. He went into the basement with me and looked at it and we agreed on a price of \$50 and he said to leave it there. Mr. Skidmore paid me for the trees and the pool table. My signature appears on Government's Exhibits E-33-A, also my wife's

signature and William Goldstein's. That document is connected with the green house sale.

Mr. Hurley: No cross-examination. The testimony with regard to the trees and the pool tables is immaterial.

The Court: How will you connect it up.

Mr. Thompson: We shall prove that the evergreen trees were delivered to Bon-Air and the pool table stayed in the house, which is a part of Bon-Air.

The Court: Motion denied on that undertaking.

SAM ROSE, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 1117 North Dearborn Street. I am a dance producer and director of shows. I was employed at the Bon-Air Country Club as producer and director. I was there during the seasons of 1938, '39 and '40. I consulted with Mr. Skidmore and Mr. Johnson relative to the shows I produced there. I would consult them about the price of the acts. When I had Mr. Skidmore's approval I would buy it. I probably saw Mr. Skidmore forty or fifty times during the period I was at Bon Air, but I did not discuss matters with him more than a dozen times. No other persons discussed with me the price that I could pay for acts to be produced at the Bon-Air except Mr. Skidmore and Mr. Johnson. I do not know who actually paid out the money for these acts.

No Cross-Examination.

1295 HENRY M. SMITH, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside northwest of McHenry, Illinois. I am a farmer. I have been employed by William R. Skidmore as farm manager. I was with him six and a half years. His farms are known as Pine Tree Farms. He has seven farms. Construction labor that was working at Pine Tree Farms was sent down to Bon-Air Country Club in 1938 and 1939. These men hauled dirt and did cement work and carpenter work. A cement mixer and some shovels and things like that were

sent down from Pine Tree to Bon-Air. Pine Tree Farms hauled sand for the golf course. Skidmore sometimes gave me directions about sending workmen down to Bon-Air. Before Mr. Skidmore bought the evergreens from Tatge he sent me down to inspect them, and then after the trees were bought he sent his gardener down to get them. They were planted around the Pine Tree farms. There was some peat moss hauled from Pine Tree down to Bon Air, probably twenty big truck loads in 1938 and 1939.

Cross-Examination by Mr. Hurley.

I am not now working for Mr. Skidmore. We used to sell milk, butter, eggs and vegetables to Bon-Air and they were delivered from Pine Tree Farms. These products were paid for by checks signed by Mr. Johnson every two weeks. The checks would amount to a couple of hundred dollars. We also delivered milk to Niles and to Chicago. I never brought any into Chicago. I did deliver some to the Lincoln Tavern in 1937. Mr. Skidmore directed me to deliver it there. He didn't mention Hartigan or Wait or any other person. We have delivered milk to the Horse Shoe. I was never there myself. I sent it there with a truck. We delivered about twice a week, that was in 1937. We got 35c a gallon for the milk sent to Bon-Air, as high as 40c a pound for butter, different prices for eggs 1296 and 30c a pound for dressed chickens. We didn't send any chickens to the Bon-Air after 1938. The checks we got were all signed by Johnson. I have been out to Johnson's farm. I was out there quite often in 1937; sort of helped him manage the place. That was before he had hired a manager. I have never seen Skidmore at the Bon-Air, but I have seen Johnson there.

Mr. Hurley: I renew my motion to strike that testimony as to the trees.

The Court: The jury are instructed that the testimony of this witness and the preceding witness in respect to evergreen trees is stricken out, and is to be completely disregarded by the jury and held as if it had not been given.

FRED BOEYE, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at the Bon-Air Country Club. I am a greens keeper there. I've been at the Club since 1938 and it is my duty to maintain the grounds. I used to see William R. Skidmore there about once a week during the summer, and perhaps less often during construction. I only saw him when I was around the buildings. My duties were out on the grounds. The grass seed that was used on the Club property was delivered by the Lawndale scrap iron truck. I saw the same trucks haul corn from the Curran farm and also haul away an old iron water tank that was taken down. The Curran farm which adjoins the Bon-Air Country Club is operated by Mr. Skidmore. His farm manager gets gasoline at the Club to operate the trucks. The trucks bear the name, Pine Tree Farms. Soy beans is being grown on the farm this year. My crew hauled some peat moss from Skidmore's farm to the Club at his direction. I got some of the evergreen trees from the Tatge nursery and planted them around the Bon-Air Clubhouse. The trees

I got were hauled in the Club truck and the others 1297 were hauled away in the Pine Tree trucks. Before these trees were purchased, I went down there and counted them. I went at Mr. Hendrickson's direction. I have seen Mr. Skidmore and Mr. Hendrickson talk together at Bon-Air. In 1938 Pine Tree Farm trucks hauled about 250 yards of sand to the Club's golf course. The Curran farm was operated by the Pine Tree Farm crew. I do not know anything about the arrangements. I do not know whether Johnson bought the sand and gravel that was hauled over for the Bon-Air. All I know is where it came from. I do not know whether the old iron tank was sold to the Lawndale Scrap Iron Company. I have heard of Roy Love, but I do not know him. I do not know whether I have seen him at Bon-Air. I have known John Geary since 1939. I saw him around the Club. I last saw him at Bon-Air about May 1940. He handed out the pay envelopes. I have not seen him this summer. Jack Sperling has been paymaster this summer. I have seen him around here today. I do not know where Geary has been this summer.

(Proceedings out of presence of jury.)

The Court: I desire that counsel let me have your sug-

gestions in respect to instructions prior to the beginning of the argument. Any suggestions held until after the conclusion of the instructions will be denied.

Mr. Thompson: We have prepared a draft of requests for instructions but something new happens each day and we have to add requests to the draft. It is impossible for us to determine ahead of time some particular instruction that might be wanted on behalf of the defendants until after the court makes his charge to the jury.

The Court: I am talking about instructions that are deliberately held back.

Mr. Thompson: I should now like to call attention to this evidence about the evergreen trees that was stricken out.

I think it should go back in. When I stated my under-1298 taking I thought there was a larger proportion of the trees that went to Bon-Air, but I know some of them went there.

The Court: I think the fact that someone got eight trees some place is pretty thin.

Mr. Thompson: I think it is thin. I think it is just about the same thickness as nine-tenths of the Government's testimony.

ELI HERMAN, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I am a lawyer and have been a member of the Bar for fifteen years. My office is at 134 North La Salle Street and my residence at 3100 Leland Avenue. I was connected with the sale of the Dells in the Fall of 1936. I represented the owners. During the course of the negotiations I talked with Mr. William Goldstein. This was immediately prior to our entering into the escrow agreement. I also talked with William R. Skidmore at his home. Mr. Skidmore, Mr. Goldstein, Mrs. Skidmore and Mr. Sam Hare were there. We advised Mr. Skidmore that we had arrived at a price for the eight acres of the Dells property. I told him it was \$10,000, plus a fee for me in connection with the matter. He said that was all right. He asked Goldstein if he wanted the cash then and Goldstein said "no"; that he could deliver it to the Chicago Title and Trust Company the next day. We entered into the escrow agreement, which is Government's Exhibit E-35-A. It is dated November 27, 1936. Under the agreement Mr. Goldstein deposited the money

and I deposited the deeds. Government's Exhibit E-36-A is an escrow agreement entered into between Mr. Goldstein and me in connection with the purchase of the additional five acres of the Dells property. That transaction took place February 10, 1937. The first conversation relative to the purchase was with Mr. Goldstein in my office about 1299 a week or ten days before we executed the agreement.

After the agreement was signed Goldstein deposited \$9,000 and I deposited the deeds. I never saw Mr. William R. Johnson in connection with this transaction. I did not know him then. I became acquainted with him at Bon-Air later.

Cross-Examination by Mr. Hurley.

Mr. William Goldstein made both deposits of money in connection with the Dells purchase. I was representing the sellers. My signature appears on E-35-A and E-36-A and I saw Mr. Goldstein sign. The sellers were my clients. I can't recall exactly how long they had been my clients. They had just become clients of mine. They were brought to me by Mr. Sam Hare. I had known Sam Hare for quite a few years. He was a client of mine, but I can't saw exactly how long he had been at that time. I had frequented the Dells when he operated it as a night club. I had never met the defendant William R. Johnson and had never had any business dealings with him. I was in the Van Spankeren settlement because I knew Mr. Sommers and had represented him in connection with several matters. Mr. Helfand asked me to get into the matter because he thought I could arrange a settlement. I talked to Mr. Sommers about the matter and he made an offer of \$750 to settle. I communicated this to Mr. Helfand and that is all I had to do with the matter. Mr. Samuel Morris was connected with Mr. Helfand and I had some conversations with him relative to the settlement. I got acquainted with Mr. Sommers because he had a place of business right around the corner from where I live. I have known Mr. Sommers for several years. I knew defendant Johnson was a defendant in the Van Spankeren suit. I was seldom at the Horse Shoe gambling house. Perhaps I was up there once a month. I don't remember ever seeing any of these defendants up there. I knew only Mr. Sommers. I knew Elmer Johnson. I talked with him about the Van Spankeren suit. I knew he was Bill Johnson's brother, but I did not know whether 1300 he was representing Bill Johnson in that case.

FRED MEYER, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at McHenry, Illinois. I am a mason. I have been employed at the Pine Tree Farms. During the period of my employment there I did some work at Bon-Air Country Club. I ran a cement mixer. This was the same mixer which I had operated at the Pine Tree Farms. While I was working at Bon-Air I used to see Skidmore around the place once in a while. I was busy with the cement mixer and did not know what he was doing. In the Fall of 1937 I was sent down to the Dells to help tear down some old buildings there. The salvaged lumber was loaded onto Pine Tree Farms trucks.

Cross-Examination by Mr. Hurley.

I did some cement work out at Sunny Acres farm. They were fixing up a new cow barn there. I was there about a month with eight or nine other men. I knew Roy Love but he was not there. Joe Rothermel was in charge of the construction crew. We worked at Sunny Acres during July and August and we were paid by the manager once a week. We were paid in currency in a small manila envelope. Government's Exhibit O-251 is a picture of the corn crib and granary at Sunny Acres farm. I cannot tell you what O-252 is. O-253 and O-254 are pictures of the Sunny Acres farm house. O-255 is the horse barn.

EARL R. ALLEN, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 8243 Sangamon Street and my business address is 2540 West Cermak Road. I am in the Sales Department of the Sinclair Refining Company and 1301 have been for fifteen years. I have custody of the records and files of the sales office. Defendants' Exhibit J-8 is a delivery record. It is kept in the regular course of business and truly represents the transactions there recorded. This card shows the opening of the ac-

count. The group of papers marked Defendants' Exhibits J-9-A, B, etc. are delivery tickets prepared by the driver at the time of delivery. They are part of the permanent files of the office and are made in the regular course of business and truly reflect all transactions recorded.

Mr. Thompson: We offer in evidence Defendants' Exhibit J-8 and the group of documents J-9-A, B, etc.

The Witness: Discussions respecting discounts and other matters concerning this account were had with Mr. Eisen, bookkeeper for the Lawndale Scrap Iron Metal Company.

Cross-Examination by Mr. Hurley.

I have never been to 2840 Kedzie Avenue. Mr. Eisen would come to my office or talk to me over the phone. Mr. J. C. Nagles sold this account. He was a commission driver for the Company at Highland Park. He is not working for the Company now but did for about four years. He handled this account from its inception to about January of this year. The service station covered by this account was on Milwaukee Avenue, about one mile north of Wheeling, but is adjacent to the Bon-Air Country Club. I had nothing to do with making out the delivery slips. I do not know W. R. Peacock. The delivery tickets are in the driver's handwriting. There was a contract entered into in connection with this account. It was executed in 1938 by William R. Johnson, as secretary of the Bon-Air Country Club. The contract is marked Government's Exhibit X-254. The account was carried with W. R. Skidmore. We could never get Mr. Skidmore's signature to that contract, but we finally got Mr. Johnson's, as the secretary of the Bon Air Catering 1302 Company. The name W. R. Skidmore appears on the delivery tickets, though the contract shows that it was made by the Bon-Air Catering Co. It is our understanding that there was a copartnership. We got that by conversation. We didn't install the equipment at the Bon-Air Service Station. We had the advertising only. I do not know who put in the equipment. Government's Exhibit X-256, dated May 26, 1938, is a motor oil sales contract, but it never became operative. It was signed Bon-Air Gas Company, by William R. Johnson. I had nothing to do with the document except file it.

Redirect Examination by Mr. Thompson.

The contract of the Bon-Air Catering Company was included in the Lawndale Scrap Iron and Metal Company and Pine Tree Farms contract.

Examination by the Court.

There was a contract with the Lawndale and Eisen told me to include the Bon-Air in that contract. We had a certain quantity discount contract with the Lawndale and there had to be a certain gallonage in order to get the price. Eisen, the Lawndale's bookkeeper, told me it was owned by Skidmore.

Further Redirect Examination by Mr. Thompson.

The bills were mailed to Mr. Peacock at 140 North Dearborn Street. I do not know who Mr. Peacock is, nor with whom he is associated. The Mr. Eisen to whom I refer is the same person with whom I had my conferences respecting the Bon-Air contract. Defendants' Exhibit J-10 is an oil sales contract with the consumers. It is a part of our files and made in the regular course of business. Discounts were paid under this contract for deliveries made to Bon-Air. We have had the account 1303 with Lawndale Scrap Iron and Metal since 1936 and also with Mr. Skidmore's farm. When we got the Bon-Air account we just continued paying discount on gallonage deliverage over a thousand gallons a month on that contract. I discussed the matter of discounts on the Bon-Air deliveries with Mr. Eisen.

Mr. Hurley: I renew my motion to strike the testimony in respect to this contract.

The Court: Is that all the testimony you have on the subject?

Mr. Thompson: There will be another witness on the subject. We shall undertake to connect it up.

The Court: That undertaking does not mean anything as far as this court is concerned. State something definite, otherwise I must strike it out.

Mr. Thompson: The undertaking will be to show a connection on these two contracts. It has to do with proof of joint ownership of this property.

The Court: Make a definite undertaking upon it and I will let this testimony stand. If you don't I must strike it out.

Mr. Thompson: The testimony of the witness Johnson when he is produced will show the connection between the contracts. He had no dealings with this man but he does know Eisen's connection and who he was representing.

The Court: The testimony may stand. The motion may be renewed after Mr. Johnson has testified. Is Mr. Johnson going to testify?

Mr. Thompson: He is.

JOHN M. FLANAGAN, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

1304 I am one of the defendants in this case. I was born in Chicago. I graduated from grammar school. After that I worked as an office boy for President Robert T. Lincoln of the Pullman Company. I stayed there about two and a half years and then went to Omaha and worked in the Miller Hotel as a bell boy. I continued working in hotels until 1917, when I went into the army. I was overseas for about nineteen months. I was discharged in 1919 and returned to San Francisco and went back to work at the Maux Hotel as assistant manager. I left there in 1923 as manager and purchased the Wade Hotel. I sold the Wade Hotel in 1924 and returned to Chicago. In the latter part of 1924 I was engaged at the Edgewater Beach Hotel as assistant manager and I stayed there until 1926. In the summer of 1924 I worked at the Hawthorne race track. I resigned at the Edgewater Beach to return to San Francisco but my mother became ill and I did not go back. I opened a horse book at 3833 West Ogden Avenue. I stayed there until 1929 when I moved to 2141 Pulaski Road. It was Crawford at that time. In 1930 I opened a service bureau at 2135 South Crawford. I also handled a horse book at 4020 West Ogden. One must have two places to operate and move from one to the other. I continued to operate at 2141 South Crawford, now Pulaski, and 4020 West Ogden Avenue until October, 1939. I operated these places alternately. I was the proprietor and

no one was interested with me in the operation of this gambling house. I hired the employees, discharged them, directed them in their work and paid all the operating expenses. I had no obligation or agreement to divide any of the profits with any other person from my gambling business and no other person ever participated with me in the profits of this business. This applies to both 2141 and to 4020. I had no partner or business associate in the operation of these gambling houses. Mr. William R. Johnson was the owner of the real estate at both locations.

I occupied them as a tenant and I paid rent regularly 1305 down to the time I closed last Fall. The Service

Bureau which I operated at 2135 South Crawford is a little difficult to explain. It is a place where I sold service and race information. I do not remember the landlord's name, but he operated a little jewelry store downstairs. I was simply a tenant on the property and paid \$50 a month for this second floor. I was the exclusive owner of this service bureau. William R. Johnson had nothing to do with my opening the bureau and had no interest in it. When I opened it, or at any other time, I never discussed with him, or any other defendant, the matter of opening the bureau. When I opened the bureau I had four customers. I solicited these customers. The first subscribers to my service were Tom Barnes, Garrett Meade, and Frank Villim. My own place was the fourth. I charged the subscribers \$5 a day. I gave them the morning line and later the revised line. We would change the line that came from the General News Bureau and Nationwide when the price maker thought the prices were not right. A line is the prices on the horses. One horse might be two to one; another three and so on. The morning line was sent out to the subscribers about 11:30 A. M. The information came into my Bureau by a teletype machine. It is like a ticker tape in a broker's office. This tape shows the jockeys, the scratches, the prices, the description of the race and the results of the race and the mutuels. When I first opened I furnished my subscribers with two telephones, one was a two-way phone that connected my office directly with their houses. I could call them and they could call me. The other was a one-way phone over which they received a description of the races and other information. When I first opened in 1930 they didn't have amplifiers. The phone was kept open all

afternoon and the information was given to a service man in the horse books. About 1934 the one-way line terminated in amplifiers in the subscribers places. Ralph 1306 Moss would describe the races over these lines. First he would give the subscribers the morning line and then as the races progressed he would give them the results and the mutuels. He did all of the broadcasting. He was employed by me from about the time I opened until I closed. I talked with him about the service bureau before I opened it, but he was in no way interested except as an employee. He was a price maker and I paid him \$15 a day. He had devoted his life to the study of horse racing. He knew the horses and the racing conditions and he could fix the prices for the different horses. In making the prices on the different horses he took into consideration their past performances, the condition of the track, the jockeys that were riding, etc. After the morning line would come in from the General News Bureau he might change the prices. He might think a four to one from the General News Bureau was high and he might cut that horse to three to one. He would readjust the prices as he thought best. Over the one-way wire he would give the race results, the mutuels and other sporting news. This was broadcast in all of the subscribers rooms simultaneously. I served during the period that I operated this Bureau a total of twenty-two houses, but the largest number I ever had at one time was fifteen. At first I got my information through the General News Bureau and later through the Nationwide which took over General about 1934. Over the two-way phone bets were laid off. That occurred when a bookmaker had more on a horse than he cared to handle. Then he may lay off a part of the bet to someone else. I took these layoff bets. I also took the daily doubles off the hands of my subscribers. I also tipped off the subscribers when someone was in trouble with the authorities. A daily double is a separate pool at a race track. You must pick the winner of the first race and of the second race. These daily double transactions are closed before the first race starts. It is a tough gamble for one room handling a few daily 1307 doubles. There is no limit to what a daily double may pay. I accepted these daily doubles from my various subscribers on condition that they gave all of them to me. If you handle a lot of combinations on daily doubles

the risk is reduced. I had a \$500 limit on them. At the end of the day I would call the different subscribers and check up with them. After that they would send over a package to me which contained the duplicate sheets showing the layoffs and the daily doubles and also containing the hard sheet. The package and its contents marked Defendants' Exhibits F-4-A, B, etc. is such a package and was delivered to me. F-4-B is a hard sheet which contains the horses' names, jockeys, prices and mutuels and the daily double prices. When this card is received it is blank except for the names of the different race tracks and the names of the horses entered in each race. Formerly the cards also carried the numbers of the horses but since the Nationwide went out of business, they are now numbered after the cards are delivered. The horses are numbered by giving the first horse in the first race at the first track number 1. After all of the horses in that race are numbered the top horse in the second race is given the succeeding number and so on through the card. F-4-C is a sample of a daily double sheet. The straight lines are 50¢ bets. The figure 1 represents a dollar bet and other figures represent the amount of the bet. Each subscribers had a number. F-4-D is a sample layoff sheet. On the first line is horse No. 404 and the bet is \$5 to win. On the second line is horse number 213 and the bet is \$5 to win and \$5 to place. Either Moss or I would accept the packages that were sent over after the races were concluded. They would arrive about 6:30 or 7 o'clock in the evening. Along with this package 1308 would come an envelope containing money. If I won a subscriber would send over what he owed me. If the subscriber won I would give the messenger an envelope which he took back to the subscriber. The service charge of \$5 a day was paid by adding it to the amount that the subscriber owed, or deducting it from the amount I owed him. It was settled in cash along with the other transactions. Government's Exhibit O-1 shows the location of my first office at 2135 South Crawford at the point where the Government's witness first placed the yellow-headed button. The first subscribers served were at 4020 Ogden Avenue, at Lawrence and Kedzie, at 2500 Sawyer and at Irving and Cicero. I kept adding stations as I got new subscribers. The subscribers were not continuous, some would be on and others would be off. Mr. Moss was

always employed in my Service Bureau and if I got busy I would bring over some help from my place at 4020 Ogden. In August, 1938 I moved my Service Bureau to Irving Park and Cicero. Defendants' Exhibit F-5 is an engineer's plat that was given to me at the time I installed my equipment at Irving and Cicero. The rectangle appearing in the upper left hand corner of this exhibit, as well as F-5-A, which is an enlargement, is the key cabinet located in my office. The telephone lines going into this cabinet were operated with keys. The cabinet was so hooked up that I could give simultaneous service to all my customers over the one-way lines. At that time there was a line to the Dev-Lin at Devon and Lincoln which went through the Niles Center Exchange. There was a line to 4721 North Kedzie and to 3946 School Street which went through the Irving Park Exchange. There was a line to 1205 North Dearborn which went through the Superior Exchange. There was a line to 5725 Lake Park and to 6245 Cottage Grove which went through the Hyde Park Exchange. There was a line to 2133 South Kedzie, 1309 2141 South Pulaski and 4020 West Ogden which went through the Lawndale Exchange. There was a line to 400 South DesPlaines and 7212 Circle which went through the Oak Park Exchange. The Horse-Shoe was at 4721 North Kedzie, the Casino at 4715 Irving Park and the Southland at 6245 Cottage Grove. I paid for all of the telephone connections between my office and the subscribers establishments. No one else made any contribution to this investment. Frank Vase is the name which I used with the Telephone Company. I began to use that name when I started in the gambling business in 1927 at 3833 West Ogden Avenue. When I opened that place it was vacant, but it had been a horse book. There were two telephones there under the name of Frank Vase and I just continued to use the name. The Service Bureau at 2135 South Crawford and later at Irving and Cicero was always carried under the name of Frank Vase. No person by that name was ever in any way interested in the business. I changed the telephone service from the name Frank Vase to my own name at 4020 West Ogden in 1939, but I didn't change the name of the Service Bureau. Government's Exhibit O-126-A is the slip that shows the change. I signed the white slip but it shows only one telephone number. At that time I changed two telephones,

Rockwell 5900 and 5901, to Crawford 1066 and 1067. I do not understand about the yellow card attached. I had nothing to do with making out that card. I only signed the white one. In 1938 the State's Attorney chopped up my place at 2141 South Pulaski and had my telephones removed and I was never able to get them back. The phones were there in the name of Vase, as they were at 4020 West Ogden, and that had something to do with my making the change. The establishments at 2133 Kedzie, 2135 Pulaski and 4020 Ogden were all served over 1310 one telephone line to save mileage. The installation was paid for by the mile. There was only one line from the Service Bureau and then a separate line out to each establishment. The line went through the Lawndale Exchange, but there were no operators involved. Defendants' Exhibit F-6 is a diagram of the first floor of the building at Irving and Cicero. It correctly shows the entrances to the building at the time I moved my service bureau to that location. The entrance used to reach the service bureau was 4707 Irving Park. You went to the second floor and then you went completely around the building to reach the office. Defendants' Exhibit F-7 is a diagram of the second floor. After you went up the stairs from the entrance at 4707 you made a right turn and went to the end of the hall and then a left turn to the end of the hall and then another left turn to the doorway, which was the entrance to the office. My office occupied the large rectangular space in the lower left hand corner of the plat marked F-7. There was no way to go directly from the casino on the first floor, which is indicated on F-6, to my offices on the second floor, which are indicated on F-7. 4715 Irving Park was an entrance to the Casino on the first floor. There was also an entrance at 3971 Milwaukee Avenue. You couldn't reach my office through either of these entrances. There was an entrance at 3765 Milwaukee through which my office could be entered by a back stairway, but we always kept that entrance locked. The offices on the Irving Park side of the second floor, entered through 4707, were occupied by a dentist and a dancing school. The other offices on the Milwaukee side were all vacant while I was there. The only use I made of 4715 Irving Park was to receive my mail at that number.

There was no mail box at 4707. The packages containing the hard cards and duplicate sheets were delivered to me or Mr. Moss in the lobby at 4707

Irving Park. I never had in my employ any person by the name of Morgan. I never received any of the supplies that Mr. O'Neil testified he delivered to a Morgan at 3971 Milwaukee. I do not know the Mr. Morgan to whom Mr. O'Neil was making these deliveries. I purchased goods from Mr. O'Neil but they were delivered at 4020 West Ogden by Mr. O'Neil to me. There was a Mr. Conroy who made his headquarters at my service bureau, but he had no interest in my business. He was a bookmaker and came to my office to get layoff bets. When he took a layoff bet it was his business and I had no interest in it. There was no partnership arrangement between us. Mr. Conroy made some of the arrangements for my telephone service. I know Roy Love and he did some carpenter work for me at 4020 West Ogden. I hired him and I paid him. Later he did some work for me at 2141 South Crawford. I think he sent some men to do some work at Irving and Milwaukee, but I do not think he was there. During the time that I was at 4707 Irving Park, Ralph Moss and Donald Peterson were employed in my office. There was no one employed there named Roy. I have known the Mr. Lenz who testified ever since I have been in business. He was the manager of the General News Bureau when I went in the gambling house business. I never had a teletype machine at 2141 South Crawford. The first one I installed was at 2135. Mr. Lenz testified that he had met me two or three times, but he has met me at least two or three dozen times. We were always having arguments over rates for service. After General News was taken over by Nationwide James Regan was the manager. Lenz was never manager of Nationwide. He continued to work in the business but in no official capacity and I had no dealings with him after Nationwide took over

General News. Lenz never met William R. Johnson 1312 at 4003 Ogden Avenue because I never was at that address. The only meeting that I can ever remember having with Lenz and Johnson was at 4020 Ogden. I do not remember much about it but Lenz was arguing with me about a rate and Johnson came in while the argument was going on. I never made an appointment with Lenz to meet Johnson to discuss rates. Johnson had no interest in the rates that I had with General News. My rate varied from \$75 to \$260 a week. I never paid as much as \$400 a week for services. I was up to the offices of Nationwide many times after it took over General News. My business

there was always an argument over rates. William R. Johnson was never at the offices of Nationwide with me. When I went up there I had my discussions with James Regan. I never saw the customers account books of General News or of Nationwide prior to this trial and I know nothing about what was entered in those books. Before this trial I never knew the witness Schumacker and I do not remember that he was ever in my place of business and I do not recollect having any conversation with him. I know Canfield who testified. He used to work for me at 4020 and he did some work at the office at 2135. I do not recall that John J. Hays ever worked for me. Mr. Creighton, Mr. Mackay and Mr. Hartigan never worked for me at 4020 Ogden to my knowledge. They were never employed by me at any place at any time. My business was small. In the afternoon I had horses, black jack and one crap game. In the evenings I had chuck-a-luck and a wheel and the black jack and crap game continued. I had only one crap table. I had a box man at the crap table and a manager of the book. I was in direct charge of my gambling house. I never had a floor man. A box 1313 man took care of the side games and the manager of the book took care of the horses. There was never a robbery at 4020 and Mr. Johnson never came in after a robbery had taken place as Hays testified. I was never employed at the Lincoln Tavern and I have never drawn a cent anywhere as a salary since I left the Edgewater Beach Hotel. I never told Hays to report at Kedzie and Lawrence as he testified. I was never in any way connected with the Dev-Lin and had no part in its management, as the witness Cobb testified. Brantman made out my income tax returns and I told him that my business was gambling. I never told him that my income was derived from salary or bonus. He said that there was no specification in the Revenue Act about income from gambling and that he would take care of it. I went to his office and he asked me some questions and put the information down on a piece of paper and then I signed a blank return and he would figure out the amount of the tax and I would give him the money to pay it. I heard Malkowski of the currency exchange testify that Mr. Couch introduced me to him. Couch was my doorman and I took him down to the currency exchange and introduced him so that he could get checks cashed. When I was closed up in town

I had no place to move in the country and so I would get my bankroll changed into hundred dollar bills. When I reopened I would change the hundred dollar bills into working money. I do not think I ever cashed enough checks at one time to get hundred dollar bills. I used hundred dollar bills in my business to pay off those who won more than a hundred dollars. I never supplied any bookmakers or customers from my Service Bureau. William R. Johnson never had any interest in my business. I had no knowledge of income tax returns that he was filing. I never had a conversation with him respecting his income tax returns, nor with him respecting my income tax returns. I never paid Mr. Johnson any part of 1314 the returns from my various businesses other than paying him rent for his buildings. He had no interest in my gambling houses, nor in my Service Bureau. I never had any conversation with any of the other defendants respecting their income tax returns. I didn't know whether the other defendants were filing income tax returns, nor did I know anything else about their business. None of the other defendants had any connection with my Service Bureau except as customers.

Mr. Thompson: We offer in evidence as an illustration the package which is Defendants' Exhibit F-4-A, B, etc., the telephone chart F-5 and the enlargement F-5-A and the plats F-6 and F-7.

Cross-Examination by Mr. Plunkett.

Defendants' Exhibits F-4, B, C, D and E are just samples. I made them up two or three days ago. They were not actual sheets made up at the time of transactions. I got the hard sheet off of a bookmaker Jimmie McGlory. The date is on the sheet. I got it perhaps three weeks ago. I had sheets similar to these when I was in business. You had to have those to operate. I do not have any of them now. I keep them a few days and then destroy them. Sheets similar to F-4-C and F-4-D were delivered to me by my subscribers at 4707 Irving Park, along with the hard sheet. I ran a horse book at 4020 Ogden Avenue and my sheet writer kept sheets of every bet that was made. They were kept in duplicate. F-4-C and F-4-D are not duplicates. They represent an entirely different transaction,—a transaction with the manager of the book. Whoever was making the

lay-off bet would write out the lay-off sheet which was sent over to me. At the Horse-Shoe that would be Eddie Gates, the manager of the book. I will explain how a lay-off bet is made. Take first race at Detroit, the horses are 1315 numbered 601 to 613. Let us pick 609, which is a 20 to 1 horse. The book manager may choose to lay-off \$10. He takes a pad and writes down number 609 and after that he puts down \$5. to place. He lays off \$5 of the bet with me. Every bookmaker in Chicago has the same hard cards. He could not operate without them. He refers to that card to get the horse that he is betting on. He takes up the sheets that the sheet writers have written and he sees that the betting is heavy on say number 404. He looks at the hard card and finds that this is a 15 to 1 horse. He does not want to risk that much money, so he decides how much he wants to lay-off. He picks up the phone and calls me and says he wants to lay-off that horse \$10 or \$15, or whatever it is. The man that makes the lay-off proposition to me is the manager of the horse book. I have before me identically the same sheet as he has. At the end of two or three days I burned up the duplicate sheets that were sent to me at my office. Either Moss or Conroy or I would take them down to the furnace and burn them. I kept my record of wins and losses in a little book. I took these figures from the sheets. I kept my customers' accounts. The rate was \$5 a day and this was paid every day. I paid for my book at 4020 Ogden and charged myself \$5 to help maintain the office. \$5 was actually sent from the 4020 Club to the Irving Park office. I had an office on the second floor at 4707 Irving Park. I never heard that office referred to as a clearing house. I call it the office. That name distinguished it from my office at 4020 Ogden. Whatever cash I received at the office each day was put in my pocket. If I had losses I sent the money back to the winner by his messenger. When the messenger brought me the sheets I had them checked with the manager or owner of the book with whom I was doing business and I knew how much I owed him or how much he owed me. To illustrate, take the Horse-Shoe. At the 1316 end of the day when the races were over I or Ralph Moss picked up the phone and called off our business with them. We would check our sheets and if there was a mistake it would be rectified. After that the subscriber's sheets would be wrapped up with his hard sheet and sent over to me by a messenger. If I owed him money the en-

velope would be made up when he arrived. By the time I had finished my conversation with Eddie Gates at the Horse-Shoe our business would be straightened out. If he owed me \$40, which included the \$5 service fee, he would send it over in an envelope. If he had won I would deduct the \$5 service fee and send the balance to him. Gates would send over the money he owed me and the sheets and the hard card. When it was delivered to me I did not issue a receipt. I had the duplicate sheets sent over for my protection. The subscribers' sheets and my sheets corresponded. When the subscribers' sheets were sent over it protected me from my employees writing a bet down on me. Whatever money I won I put in my pocket. We would finish our work at night by 7:30 or 8 o'clock. I didn't audit the sheets of the regular sheet writers at the different places. I had sheet writers at 4020 and they kept their sheets in duplicate. When a sheet is filled the manager of the book takes the sheet and the money and checks it. The original sheet and the money is turned in to the cashier. The cashier cannot write in a bet because it would appear on the original but would not appear on the duplicate. Having the sheets written in duplicate served only as a protection. At the end of the day the manager can take the sheets, either the duplicate or the original, and find out how much has been won and lost. The sheets are kept in the safe for a while and then they are destroyed. I have none of the sheets that 1317 were used in the operation of the handbook at the 4020 Club. I have been out of business for over a year. I usually kept the sheets at 4020 for about a week. I have none of the pay-out slips which were issued by the floor man. I have none of cashier sheets that were used in connection with the side games. They were simply working sheets. They have been burned up. I have my Social Security records. They are at home. They contain a record of all my employees. I am not willing to bring them down here because there is going to be another case. Defendant Johnson is the owner of the property at 4020 Ogden Avenue and at 2141 South Pulaski. I do not know who owns the property at 4707 Irving Park. I rented from the lady in the vault, who is the agent of the building. After Mr. Johnson purchased 4020 Ogden and fixed it up I rented from him as a move spot. I had been renting 2141 South Crawford from him. 4020 had been a garage. Mr. Johnson closed off the big door and made a new entrance and I put

in the counters and other things on the inside. I was looking for a new location when I discovered 4020 was vacant. I found out that Mr. Johnson owned it and I rented from him. It is not always easy to find a location for a gambling house. You must keep away from schools, churches and business houses. 4020 was empty when I found it. There hadn't been a gambling house in there. It is an old garage. I knew Bill Johnson when I rented this place from him. Prior to making inquiry I did not know that he owned 4020. I agreed to pay him \$250 a month. At that time I was operating at 2141 South Crawford in a building I was leasing from him. I was looking for a place and found this one vacant and sought out the owner and rented it. I had been operating in that locality in at least fifteen different places, rented from fifteen different landlords. When I first located 2141 I didn't have the slightest idea who owned 1318 it. Prior to locating the spot I had no conversation with Mr. Johnson about it. I think I rented 4020 in 1931. As near as I can recollect I sought out Mr. Johnson and told him I would like to rent the place and we agreed on the terms. It was a long time ago and I do not remember the exact conversation. I told him I wanted to use it for a gambling house; in fact, every landlord in Lawndale knew what I used a building for. Mr. Johnson gambled at 4020 around 1937. He shot craps head to head with big John Murphy. The house had no interest in the play. That is the only occasion that I recall that Johnson gambled at 4020. He never gambled at 2141. I paid \$250 rental at 2141. I was maintaining both establishments, 4020 and 2141 at the same time. I was also running the Service Bureau at 2135 South Crawford. I was paying rent on three different places. I do not believe I have any of the rent receipts. I am not a tenant in any of these places now. I gave them up in October 1939 when I went out of business entirely. When Nationwide was put out of business they put me out of business as far as service was concerned. So far as the side games are concerned, the location at 4020 and 2141 have petered out. The only conversation I had with defendant Johnson at the time I quit business was to tell him I was no longer his tenant. I never had a lease. I suppose Johnson gave me rent receipts. I don't remember. A receipt was not necessary. I kept a day to day record of my expenses where I wrote down my ins and outs. I think I met defendant Johnson the first year that I came home

from California, 1924. I met him with Bill Tennes at a party at the Congress Hotel. There were quite a few Western men there, including the owner of the old Tiajuana race track, whom I knew very well. They were here for the

Hawthorne meeting. At that time I knew no other 1319 members of the Johnson family. I now know his

brothers, Elmer and Joe. I had a Joseph Johnson working for me at the race track and at 4020 Ogden. He was no relation to defendant Johnson. He was Swedish. I think my brother Bernard Flanagan worked in a gambling house at 53rd and Lake Park. I do not know of any other place where he worked. Government's Exhibit O-125 is a photograph of Joe Conroy. He is the one who laid out some of my telephone service. He would figure out changes in the key cabinets. That is about the only service he rendered me. He was an old telephone man. The Telephone Company's engineers figured out the lay-out with him. He did the negotiating for me. I never knew that he used the name Morgan when he dealt with the Telephone Company. He was dealing strictly for me and was in no way involved. I did not pay him for his services. He did these things in return for me giving him space in my office. He would take lay-off bets at my office. He was the only one who had that privilege there. The lay-offs with my office were not confined to my subscribers. I also laid off with Les Brunneman on North Broadway. He took some of my lay-offs and I took some of his. That is the only one I can think of at the present time. My lay-off business was done with my subscribers, with Conroy and with Brunneman and some others, but I cannot recall their names right now. They were all in Chicago. The arrangements for lay-off bets were made over the phone. All the lay-off business was conducted in my name. The name Frank Vase used on my telephone contract was signed by Ralph Moss or Joe Conroy or me. It was the name I more or less inherited with my first telephones. The phones were either at 3841, 3640 or 3833 West Ogden Avenue. Those were among the first places I had. When I installed the Service Bureau at 2135 South Crawford I had been using the name Frank Vase for two 1320 or three years. I do not know any person by the name of Frank Vase, nor do I know Frank Vassasak. In addition to using Frank Vase on telephone contracts I may have bought some things in that name, but I do not recall it. I have also used the name Hirer in connection with an elec-

tric light contract at 4020. I do not know any person by that name. I do not recall using any other name. I did some lay-off business outside of Chicago. I think it was in 1932. I did business direct with the Tanforan race track. I had a wire running directly from my key cabinet to the long lines building of the telephone company. I had this line so that I could call long distance without putting a call through the local operator. I used to call Tanforan race track every day during the race meet there. I do not recall any long distance calls in 1938 or 1939. I do not think I had the long line hooked up with my cabinet at that time. I am not sure about 1937. If you have the records I should like to see them. I would not want to say without looking at the record. I have no recollection independent of the record. I have a definite recollection about using the long distance to Tanforan every day during the meet, but I do not recall, offhand, any other long distance business. I do not recall any other business transactions with persons in other cities during the time that I was operating this office. In addition to buying dice from E. M. O'Neil I also bought lay-outs and other gambling equipment. I do not recall ever buying anything from O'Neil which was delivered at 4707 Irving Park or 3971 Milwaukee. A stairway ran down from my office at 3965 Milwaukee. 3971 Milwaukee was an entrance to the Casino on the first floor. We never used 1321 the stairway from 3965 Milwaukee to my office on the second floor. Both doors were locked and I had a key to them. In my business you try to keep your place as secretive as possible. No one but me could use the stairway entrance at 3965. When you entered at 4707 Irving Park you had to go upstairs and then walk down three corridors to reach my office. That was more private than coming up the back stairway. There are swinging doors in the corridor before you reach the office. There was no light which flashed when some one passed through the swinging doors. I did not have any light inside my office that flashed. You had to pass through two doors to get to the office. There was some space between the doors. Both doors were locked at all times. The only way a person could get into the office was to telephone and have me meet them at the entrance at 4707 Irving Park. The janitor did not have a key to the office and he could come in only after Mr. Moss came down in the morning. I did not spend all my afternoons at the office, but I spent some part of every afternoon there. I

had no set rule about the time of arriving and leaving. I didn't get there in time for the morning line. Sometimes I was there by the time the first race was run. It was not necessary for me to be there at any definite time. After the races were over I would leave and go to the west side. My book manager was in charge of the book at 4020 West Ogden while I was at the office and the box man was in charge of the side games. There was only one crap game and one black jack game. I also had a cashier who was on duty while I was away. For every cent that was cashed out at the crap table a ticket was written. If it was a black jack that was cashed out there would be an "X" underneath it. The tickets showed for themselves what was going on while I was away.

1322 Ralph Moss was in charge of the office when I was over at 4020 Ogden. Donald Peterson also worked up there. Tommy Canfield worked for me while I was at 2141 South Crawford. Each of my subscribers had a number. The reason for giving each place a number was so that we could ring them from the office. When one of the subscribers wanted to call us they picked up their phone and a light flashed. Some of the subscribers were on the same line and so we had to have a number to identify who was calling. When we answered he would announce his number. The 4020 Club was number 8. I think the Horse Shoe was number 5. The numbers changed quite frequently. Sometimes I talked with the subscribers and sometimes it was Peterson. Conroy may have answered occasionally if he was sitting there doing nothing. If it was a wager offered, he would ask me whether I wanted say \$5 on number 6. Then I would answer. Conroy spent most of his afternoons in the office. He made his living as a bookmaker. He came up there from 1932 to 1939. I first met him at 2141. He told me that he was a phone man and a bookmaker and he asked me for an opportunity. During the time he was around the office from 1932 to 1939 I did not know whether he had any other business. I do not think I have seen Conroy since last March. I have not seen him within the last week or so. I do not know where he lives. I do not recall ever having had occasion to call him on the telephone at his home. I do not recall any other person who worked at the office. I don't know any man by the name of Morgan. I found a location in the Irving Park building after looking for months. It is very difficult to find a suitable place for such an office. In

looking around I discovered that there was a horse book in the building and I asked Moss to see what he could find out about the place. I knew defendant Mackay was running the horse book there, but I did not ask him anything about moving my office there. Moss found out about the vacant space on the second floor of the building. When I found out there was a handbook in the building I naturally assumed that they might allow an office like mine to be located there. After Moss checked over the place I went and looked it over. Moss arranged to rent the office. I agreed to pay \$50 a month and it was paid to the vault keeper downstairs. I did not know William Goldstein had anything to do with the building and I never saw him in connection with it. I leased this office in the name of Frank Bates. I notice there has been an erasure on the back of Government's Exhibit O-256-A. The bottom signature is mine. I don't know the name Frank Morgan that appears above my signature. I am looking at a check made to one Frank Morgan, for \$240, dated March 7, 1938. I do not have the slightest recollection of that check. I know the maker J. J. Dugan. He is a bookmaker at Devon and Broadway. I have had some transactions with him. I made some bets with him in 1936. I may have had one or two transactions in 1938, but I doubt it. Our transactions were lay-offs. I do not recall this check. All of my transactions with Dugan were horse bets. They would be made over the telephone. I do not know Frank Morgan whose name appears on this check. I have received checks payable to Frank Vase which came from the Telephone Company. I do not recall any other checks and if you have any I should like to look at them. I might have got some checks from Forest Park made payable to Frank Vase. If I did, either I or Ralph Moss endorsed them. If I got such checks I was undoubtedly doing business under that name with those persons. I first met defendant Creighton at the Hawthorne race track in 1924 and I have seen him a lot of times since then at different places. I met Jimmie Hartigan when I first went out to the west side around 1928 or '29 and I have seen him quite often since then. I believe my first meeting with Mr. Sommers was when Tom Barnes died. That is quite a while ago, but as I remember it, he took over where Barnes left off. I met defendant Mackay when he took over the Casino from Garrett Meade, I believe, early in 1937. Garrett Meade was one of my first

customers. Frank Villim has worked for me since he was a customer. He has been working for me since 1932 whenever I was open. He deals black jack and craps. I never met defendant Brown until he was indicted with me in this case. I had never heard of him prior to this indictment. I never had a penny's worth of business transactions with him. I was not in his currency exchange and I never met anybody there. I did not know Brown at the Ogden National Bank. I did business with the Bank back ten years ago, but did not know that he was assistant cashier there. In operating a horsebook, when a sheet writer takes a bet he gives the patron a ticket. If a patron wins he surrenders the ticket to the cashier. There are no duplicate tickets kept when the originals are issued. My office at Irving Park and Cicero was furnished with a large table down the center of the large room, which had a key cabinet at each end. There were four regular exchange telephones on the table. In the little side room was the broadcasting service and the teletype. The broadcaster would read the information from the teletype tape. There was no filing cabinet in the office. The duplicate sheets were kept piled on the large table. There was no other furniture in the room except chairs. Lincoln Tavern was on Dempster Road, in Morton Grove.

It would be approximately where you are placing the 1325 tack on the map. I had wire service in there for Mr.

Hartigan. Except for a week or ten days that Mr. Sommers was there, all my transactions at the Lincoln Tavern were with Mr. Hartigan. I arranged with the Telephone Company for the service. I also furnished service to the Casino downstairs. There was the one-way line and the two-way line. The pins on Government's Exhibit O-1 show the approximate locations of places that I served at different times. I think the pin at the top of the map shows the location of the Everglades which was operated by George Turner. He operated a book but I do not know what else, because I was never there. I have known him for years and I think he came to 4020 to arrange for his service. The premises at 4020 are about 50 x 80 feet and at 2141 are about 25 x 125. 4020 was occupied exclusively by my gambling room. 2141 had a cigar store in front which operated only when the gambling room was operated. Government's Exhibits R-44 to R-49 are my income tax returns. The early ones were prepared by Brantman and the later ones by Radomski. I do not remember why I made the

change. The 1937 return reports "miscellaneous income". I told Radomski my business was gambling and that characterization was put down there without my authority. The same is true of using the word "speculator" in my 1930 return. In 1939 the accountant put down gambling. Any time I filed I told Brantman or Radomski that I was a gambler and this time it was so stated. In 1939 I reported \$4800. I gave Radomski my figure from my little account book. It showed the monthly summaries of my profits. I added those up and they came to \$4800. I do not know where the little book is. It was my custom when I was closed to change my small bills into one hundred dollar bills and then when I opened again I would change the one hundred dollar bills back to smaller bills. I always made this exchange at the Lawndale Currency Exchange. I do not recall any specific date when this exchange was made. In 1939 I was closed on two different occasions. I cannot recall whether when I opened I changed any \$100 bills into smaller bills, but I believe I did. I have not been able to recall anything about the J. J. Dugan check you asked about yesterday. Dugan was not one of my subscribers. I have no recollection of the transaction represented by that check. I never authorized anybody to use the name of Morgan in writing checks for me. Curley Couch was my outside door man and handy man. He ran errands for me, cashed checks, exchanged currency, etc. He had nothing to do with the Service Bureau. If I got checks there I might give them to him to cash. I had some transactions with A. H. Rott. I think it was lay-off business. He was running a book in Forest Park. Government's Exhibits O-256-B to I are checks made out to Frank Vase and endorsed by Frank Vase, but I do not recall the check O-256-G which appears to be made out to Frank Morgan and endorsed by Frank Morgan. I know nothing about it. The signature of Albert Couch is on O-256-C, D, E and H. I do not know that Couch was working for anyone but me during that period. His endorsement on those checks would indicate that they came from the office, but I would not swear to it. Ralph Moss might have endorsed the name Frank Vase on the checks but I do not recognize the writing as his. It was my practice to endorse checks given in my gambling rooms. Government's Exhibits X-257-3 to 10 are checks which bear my endorsement. X-257-1 bears no endorsement, but it was cashed at the A. A. Electric Supply

Company. Occasionally I cashed a check there. X-257-2 bears Couch's signature. I have not been able to recall any

Morgan who was in any way connected with my places 1327 of business. 4020 was never referred to as the "House of Morgan" and I never had any equipment delivered there under that name. I know the Edward Don Company which sells janitors' supplies and I have bought supplies there. I do not believe I ever bought 25 pounds of cheese cloth. I never bought it in the name of Morgan Stationery, nor do I know who could have done so. No one else was in business at 4020 Ogden but myself. I had no account with the Edward Don Company. I paid for everything in cash. I do not know how many transactions I had with them in 1939. I bought most of my supplies in the neighborhood.

Redirect Examination by Mr. Thompson.

I paid rent to Mr. Johnson regularly for the properties at 4020 West Ogden and 2141 South Crawford. I paid him \$600 a month for the two places through the year when I occupied them.

Recross Examination by Mr. Plunkett.

There is no record to substantiate these payments.

WILLIAM R. JOHNSON, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at 4224 Hazel Avenue, Chicago, and at Lombard, Illinois. I have lived at 4224 Hazel Avenue since 1923 and at Lombard since the Spring of 1937. My mother resides with me. I have lived in Chicago since birth and am 45 years old. I know all of the defendants and I know some of the gambling houses that have been named during the course of this trial. I know the Horse-Shoe, but I have never had any interest in it and have never received any of the profits from its operation. I know the Casino, but have no interest in it and have never received any of the profits from it. I know the Dev-Lin, but I never have had any interest in it, nor ever received any of the profits from it. The same as to the Lincoln Tavern and as to

Harlem Stables and the House of Niles. I know the D and D Club. It is located in property which I own. I have never had any interest in the Club and have never received any profits of the Club except rent paid for the space occupied. I know the Villa Moderne but have never had any interest in it. I know the 4020 Club and I own the real estate where it is operated. Other than receiving the rent due me I never received any of the profits from the operation of this Club. Mr. Flanagan paid me rent regularly and I always reported it on my income tax return as such. Rent for the D and D Club was paid to Mr. Tavalin and it was always reported on my return. I know the Southland Club but I have never had any interest in it and have never received any profits from it. I know the Club Western which occupies the premises at 9730 South Western Avenue, but I have had no financial interest in that Club and no relation with it except as half owner of the real estate. I know nothing about the Select Club or the Mayfair Club or the Northland Club, or the Club Proviso, or the 4011 Club. I never had any interest in any of them and do not know where they are located. I never heard of a gambling house located at 4825 Pulaski. I have heard about the Lake Park Club but was never in it and had no interest in it. I never heard of the Harlem Club. I have heard of the Club at 119th and Vincennes, but I never had any interest in it and have never received any income from it. I may have been there but I am not sure. I do not know anything about the 406 Club or one at 3332 North Milwaukee Avenue or at 3946 School and have never had any connection with or interest in 1329 any such Clubs. I knew there was a Club at 2133 South Kedzie but I never had any interest in it. I know nothing about a Club at 3209 West Ogden, nor one at DesPlaines and Madison in Forest Park. I own real estate at 2141 South Crawford. Mr. Flanagan rented that property from me and has always paid the rent and the rent has been regularly returned in my income tax reports as such. I have never had any financial interest in any gambling Club operated by any of the defendants. I have never been in partnership with any of them and had no proprietary relations with any of their places of business. Not one of these defendants has ever shared with me any of the profits of a gambling establishment operated by him. I have never exercised, or undertaken to exercise, any direction in the operation of their gambling establishments, nor any au-

thority over any employee of theirs. I have never hired any one to work at any establishment operated by any of these defendants, nor have I ever discharged any employee of any such establishment and I had nothing to do with the opening of the Service Bureau at 2135 South Crawford Avenue and do not know when it was established.

Mr. Thompson: I think your Honor has not ruled on my offer of the Flanagan Exhibits,—the package, maps and charts.

Mr. Plunkett: We haven't any objection to the charts.

Mr. Hurley: The package is immaterial.

Mr. Thompson: There were so many witnesses testified about packages being delivered before.

The Court: The charts may be received and the package may be received as illustrative of the witness's testimony.

Mr. Thompson: That is the only purpose of the offer.

1330 *Further Direct Examination of Mr. Johnson.*

I was never in the Service Bureau at 2135 South Crawford, never had any financial interest in it, never made any arrangements with any customers and never received any service from it. I was never in the head offices of the Nationwide News Service, nor those of its predecessor and I never made any arrangements with respect to the rate charged for Flanagan's Service Bureau. I know Mr. Ragen who was the General Manager of Nationwide before it went out of business. I was never in his office having a conversation with him or with the witness Lenz or with any one else concerning Mr. Flanagan's service. I met Lenz one evening at the 4020 Club. It was a number of years ago, probably around 1935. I happened to be in there one evening and I saw Lenz and Flanagan talking. I had known Lenz a long time and went over to shake hands with him. He and Flanagan were arguing about rates and I remarked "Why don't you fellows try to get along." Lenz said "What have you got to do with this," and I says "After all, he is a tenant of mine." That's about all I remember about the conversation. I do not know just what service they were talking about, but I knew that Flanagan had the same service that all bookmakers have. I do not recall ever talking to Lenz before or after that on the subject of service. I did not have the conversation related by Lenz as having occurred

at the general offices of Nationwide when Flanagan and I were present. I know nothing about the books and records of Nationwide, nor how their accounts were kept, nor in whose names they were kept, nor what charges were made, nor what entries appear. I never had a contract of any character with Nationwide News Service, nor with its predecessor, General News. I never had an account with either of those concerns. I never paid them anything 1331 or contracted to pay them anything for any service of any kind. I had no connection with the Lawrence Avenue Currency Exchange. I have known defendant Brown for a number of years. I knew him when he was at the Ogden National Bank. I had no talk with Brown about obtaining this currency exchange and I was never in his place of business and never had any transactions there. I was never in the Albany Park Bank Building where this exchange was located. Mr. Brown never discussed with me at any time anything concerning the operation of this exchange during the time it was in operation, nor did he discuss with me anything about closing the exchange. I know nothing about the books and records of the exchange and nothing about what has become of them. I never had any interest in any checks that were cashed at the exchange, nor in any currency that was exchanged there. I believe it is nine or ten years since I had seen Mr. Brown before we were indicted. I do not believe I had seen him between the time the Ogden National Bank closed, around 1931, and the time we were brought together in court this Spring. I saw the witness Schumacker on the stand, but I do not remember ever having seen him before. I never fired him back in 1930 and I never rehired him in 1938. The conversations he related never took place. I remember the witness Cieslik. He came up to me at Harlem Stables and asked whether I would help get him a job and I introduced him to Mr. Riley and afterwards I saw him working. I remember the witness Didier, but I never put him to work at the House of Niles, or anywhere else. He was the mayor's brother and was always annoying me. I probably spoke for him with some of the defendants, but I never sent him anywhere and I never put him to work. I never fixed his pay or his hours at work, or his duties, and had nothing to do with directing him. Especially back in the depres- 1332 sion years, men were frequently asking me to help them get jobs. Probably one hundred fifty or two hun-

dred times I interceded for men out of work. I remember Greenberg, who used to be a starter at the Morrison Hotel. He got out of a job and I introduced him to Mr. Creighton and he went to work. I had nothing to do with hiring him except to introduce him to Mr. Creighton. I had nothing to do with fixing his pay or his hours, or his duties. I do not know the witness Schultz, but he may have seen me around the Lincoln Tavern in 1936. I remember the witness Cusack. I had known him for a number of years. He was out of work back in 1934 or '35 and approached me one night at the 4020 Club and asked me to help get him a job. I spoke to Flanagan and Flanagan said that he didn't have a place then, but would get in touch with him at the first opportunity. I remember the witness Weeks. He approached me at the D and D Club and asked for a job and I referred him to Kelly and Mr. Kelly hired him. I had nothing else to do with hiring him and I did not fix his pay or his hours or his duties. I think I later helped him get a job at the Harlem Stables. I heard Russel and Glenn Glave testify. I never had any dealings with them and never paid them any money and never furnished anyone else with money to pay to them. I was at the Harlem Stables one night when they walked in and began arguing with Earl Jackson. I did not know who they were. Later I drove with my brother and others over to the home of Mr. Sass, where a conference was held to settle their dispute. I sat in the living room and had no part in the conference. I had no financial interest in Harlem Stables, or in the settlement of these claims. I had not known Mr. Jackson prior to this time and had no interest in his business or in his settlement with the Glaves. I hadn't known until I heard this 1333 argument that the Glaves ever had any interest in Harlem Stables. I heard the witness Hayes testify, but I do not remember ever having seen him before. The robbery that he mentioned at 4020 Ogden never took place. I remember the witness Atlas, who testified about installing the accounting system at Lincoln Tavern. My only connection with the matter was to tell him that Mr. Wait was the proprietor in response to an inquiry from him. I had nothing further to do with the matter. I didn't employ him and he never reported to me. I remember the witness Kehoe. I never assigned him to work at the cigar store at Kedzie and Leland, nor any place else. I never told him at the Dev-Lin that I would give him \$10 a week to live

on. The conversations he related never took place. I have no recollection of Mr. Coote, who testified, or of ever talking with him. I think I did meet Mr. Lebbin in front of the Horse-Shoe and he came up and I introduced him to Mr. Sommers as he testified. He was a friend of John Horan's and I think Horan arranged for him to meet me at the Horse-Shoe. This was a very usual occurrence. I have no recollection of Mr. Masury, who said that he came to me with a letter from Alderman Bowler. I have no recollection of Mr. Leonard who said that he had to have a political endorsement to keep his job at the Casino. I do not remember ever seeing the witness Early until he appeared on the stand. I know the man Cobb who testified. He was a peculiar old man, who was full of conversation. He no doubt saw me around the Horse-Shoe. The occurrence he related at the House of Niles never took place. I did not say to him "I don't see why they pick on me. I am not a politician. I am running gambling houses," nor did I say to him, "I am run to death with job seekers from Kelly, Courtney, Nash, and Arvey, and all of the rest of the men in public office." I never carried on any such conversation. I was never in the little storeroom on Kedzie where Love 1334 had his carpenter shop in the rear and Cobb never saw me there, as he stated. Cobb may have come up to me at the D and D Club, after Mr. Sommers fired him for stealing, and talked to me about getting him a job, but I do not recall any such conversation. If this conversation ever took place, I did nothing about it. I have known the witness Wolfson for twelve or more years and I helped him get a job at the Horse-Shoe in 1939. I helped the witness Singer get a job at the Horse-Shoe in 1936. He was a newsboy at Madison and Dearborn and at different times asked me if I would help him get a job. As to all the witnesses who testified that I put them to work, the extent of my action in the matter was to intercede for them. I had nothing to do with hiring them or directing their work. The conversation related by Brantman to the effect that I took him down to the Horse-Shoe and introduced Sommers, saying, "Meet my man Sommers," did not take place. I did not introduce Sommers to Brantman and I have never referred to him as my man. I never told Brantman at any time to explain to Sommers the Government was making a drive for returns from those engaged in illegal business. In 1932 I had been filing income tax returns on gambling

ains for twelve years. I never said to Brantman at any time that my name was not to appear on a return as the employer of any other person. I did not take Creighton down to Brantman's office and introduce him, nor did I ever say to Brantman to take care of Creighton. I never said to Brantman that I did not want to keep bank accounts because I did not want to supply evidence against myself. I never gave Wadsinski and Kolarik any money to settle their claims against the Graves. I remember the testimony of Miss F. Maun, but I never saw the woman before she came on the witness stand. I never had a conversation with her about the limit of black and red at the Horse-Shoe. Miss Koop and Mr. Brandt were mistaken when they said they had seen me in the Lawrence Avenue Currency Exchange. I own a one-half interest in the Dells property, 1335 erty. I made no arrangements with Goldstein to purchase this property. I learned from Mr. Skidmore that the property was for sale and I paid to him one-half of the costs of the property sometime in the Spring of 1937. Defendants' Exhibit J-3 is in the handwriting of Mr. Skidmore and is a memorandum of costs given to me by him at the time of my settlement with him on the Dells property purchase. I first paid Mr. Skidmore \$10,000 and later I paid him \$1,057.95. I own one-half of the property at 9730 South Western Avenue. I contributed about \$17,500 to the purchase of this land and the building of the improvement. I do not own the Albany Park Bank Building or any part of it, and I did not employ Goldstein to buy the property for me and never gave him any money to make the purchase and no deed was ever delivered to me by him. I know nothing about the ownership of this property. I own one-half of the Bon-Air Country Club property. The first I knew about the purchase of the property was in December 1937. I did not arrange with Goldstein in September 1937, or at any other time, to negotiate for the purchase of the property. I never gave Goldstein any money to pay for the property. I learned about the purchase in the latter part of December 1937 in Mr. Skidmore's office, when Mr. Wait was present. Mr. Skidmore told us that he had purchased the Bon-Air and he asked Mr. Wait and me to go out and take a look at it. We went out somewhere around the middle of January 1938. Up to that time I had paid no part of the purchase price. When I first visited the property it was in charge of Buck Hendrickson, whom I had

seen previously and Mr. Skidmore's office. When I first saw the property in January 1938 it was in bad shape. Mr. Skidmore had talked to me about what he intended to do about the property and asked me whether I would be interested. I told him I would and we discussed what changes we should make. The property was not large enough 1336 for our purposes. I had no interest in the Bon-Air property prior to this conversation in January 1938 and never had any interest in any gambling house or any other business that had been conducted in the property. Later the properties known as the greenhouse, the white house, the gas station and the Curran farm were acquired as part of the Bon-Air Country Club, and I later contributed my part of the purchase price. I did my business with Mr. Skidmore. I did not furnish Goldstein with any money at any time to make deposits as he testified. After we acquired the property there were some improvements made in 1938, but we delayed making large expenditures until the period of redemption had expired. Mr. Skidmore and I contributed equally to the purchase price of the property and to the payment of the expenditures for improvements and operation. We organized the corporation and made Mr. Wait president of it. I understood it was necessary to have a corporation in order to get a liquor license in the county. We gave one share to Frank Dishinger, who was a resident of the county. I understood only a resident could get a license. A lease was made with the operating company under which Skidmore and I were to receive 15% of the operating profits as rent. The balance of the profits were to be distributed, 25% to Mr. Wait, 20% to Mr. Hartigan and 55% to Mr. Skidmore and me. There were never any profits and so neither Mr. Wait nor Mr. Hartigan never received any. Mr. Wait worked at the Club during the 1938-39 and '40 seasons. Mr. Hartigan was there in 1939 when gambling was in operation. The gambling room was operated by the Bon-Air Catering Company. The Defendants' Exhibit J-11 is a certificate of title to a pick-up truck owned by the Bon-Air Country Club. The signature thereon is that of William R. Skidmore, who is my partner out there. Defendants' Exhibit J-12 is a certificate of title on a dump truck owned by Bon-Air Country Club and it bears the signature of the same W. R. Skidmore. 1337 When I bought the Lincoln Park Building at Division and Dearborn I paid \$7500 for the interests of the

other equity owners and I paid \$22,000 for the outstanding \$30,000 notes which I did not then own. When Mr. Skidmore and I bought the service station property adjoining the Bon-Air he said that he would make arrangements with Sinclair to equip the station and supply it with gas and oil, so that we would receive a discount on our purchases. Thereafter all transactions with Sinclair were handled from Mr. Skidmore's office. I had nothing to do with the arrangements except signing the contract which was brought out to Bon-Air. I did not furnish Mr. Goldstein the \$10,000 for deposit in connection with Government's Exhibit E-39. I know nothing about that contract of purchase and do not know to what land it refers. I did not furnish Mr. Goldstein the \$7500 deposited under the contract with the State Bank and Trust Company of Evanston and I know nothing about that transaction, nor to what land it refers. From the time I became interested in the Bon-Air Country Club to the end of 1939 I had contributed a total of \$365,000, less a credit of half of twenty-two thousand and some odd dollars toward the purchase of the property, the improvement of the property and the operation of the Club. As the bills came in during the period of construction in 1938 Mr. Skidmore and I furnished the money to pay them. Sometimes I would be ahead of him and sometimes he would be ahead of me. In 1939 funds for meeting expenses of construction and operation were provided in the same manner. The \$37,000 loan to Mr. Skidmore, which was outstanding at the time of my statement of March 27, 1939 was made sometime around the first of March 1939 and was repaid during the summer of that year. I recall making a statement on March 27, 1939 to Mr. Riley Campbell, Mr. L. H. Wilson and Mr. F. J. Clifford. There was the question, "Do you operate a gambling table such as dice, or blackjack, 1338 or roulette," to which I answered "Yes." The question "And get all of the winnings, or a part of them?" and I answered "Yes and no; sometimes all of them, sometimes part of them." I desire to say in explanation of that answer that if I were playing and a man bet \$100 or \$200 and the owner wanted to take \$20 or \$40 of that bet, he was at liberty to take it. He would put down whatever amount of money he wanted to bet, and so I would not receive all of the winnings on that play. That bet would be decided immediately after the play,

whichever way it was; win or lose. If a player was betting \$100 and the owner wanted to take \$20 of it he would lay down his \$20 and I would lay down \$80. If the player lost the owner would take \$40 and I would take \$160. When I took over a table I banked the whole game. During the course of the examination I was asked, "Have you ever had any business transactions with him" meaning William R. Skidmore, and I answered "No" and I desire to explain that answer. The examination was about gambling houses and I did not know at that time that there was any other subject under discussion. Among other questions I was asked, "Tell us the places where you gambled in 1937. Name some of them," and it appears that I answered "Division and Dearborn, Lawrence and Kedzie, 63d and Cottage Grove, Ogden and Crawford. That is my own gambling houses." I desire to explain that answer. When they mentioned Ogden and Crawford I said those were my buildings. I did not say they were my gambling houses. Ogden and Crawford was not the name of one house such as Dearborn and Division. There were two different houses, 2141 South Crawford and 4020 West Ogden. The punctuation in the answer should indicate that there were two houses and not one. In the statement there is this question: "Now you stated a while ago that you sometimes would take a piece of the play from these individuals. What do you mean by that? That is correct, isn't it. Didn't you state that you would sometimes take a piece of the play from those individuals?" and there appears the answer "Yes." Then there appears the question "Tell us what you mean by that." And then there appears the answer "I would take part of their gamble. If the gamble was too high for them I would take a piece of it." and then there appears the question: "On a percentage basis?" And then the answer "Yes." I desire to explain those answers to those questions. I was then talking about the same thing I had talked about before. If a player was betting \$100 and the owner wanted to cover \$40 of it, I would take the balance of the bet. Therefore the owner took 40% of it, that is what I meant. There also appears in the statement this question: "Well, when you make such an arrangement, what percentage of the profit do you retain for yourself?" And this answer, "It varies." And then this question, "Give us the range of percentages."

And then this answer, "Whatever amount of money they want to put up governs the percentage of the winnings they take." The answers to those questions means the same as I stated. If an owner comes in with \$20 on a hundred dollar bet, I would have 80% of the bet and he would have 20% of it. Such transactions were rare, but they did take place quite a few times. In comparison with the number of times I have played, they were rare. There also appears in the statement the question: "Then you make the arrangements with them whereby you agree to back the game?" And the answer "Right." Then the question: "Then when the game is over, do they report back to you as to the results?" And the answer, "Yes, or I am right there when the gambling is going on." I was never out of the gambling house while I had a table. I never left it in charge of somebody else except to step over to the lunch counter and get a bite to eat, or something like that. Then the box man and the dealers would keep the game going. I never left the gambling house and left a game in progress. There also appears in 1340 the statement the question: "During 1937 did you sustain any losses?" And the answer "No," and the question, "Every game you played in, you won?" And the answer "Yes." Those answers are not accurate if they refer to a particular play. What I meant by those answers was that when the month is over, or the year is over, I am always the winner. I have always filed profits from my gambling. This has been for many, many years. I remember a conference some time in November, 1939, with Agents Sommers and Clifford. I think Mr. Converse and Mr. Wait were present. The conference lasted quite a while, maybe an hour, or more. There were many things discussed during that conference, particularly the Bon-Air Catering Company. I was asked why the real estate did not appear on the Company's books, and I told them that the Company did not own the real estate. They also discussed 9730 South Western Avenue. I did not tell the agents that I was the sole owner of that property. I said I was part owner. I did not tell them that I was sole owner of the Bon-Air Country Club. I told them that I was part owner. In 1931 I owned certain securities which were thereafter sold and for which I received cash between January 1, 1932 and December 31, 1939. One was a mortgage for \$20,000. That was paid. And another was Chi-

cago Joint Stock Land Bank for \$5,000, which was partly paid. The \$20,000 mortgage was owed by a Mr. Judd. I acquired it in 1928 and it has been paid in full. It was paid off in installments, which included principal and interest. The principal was paid as follows: In 1933 \$83.51; in 1934 \$515.91; in 1935 \$1,576.18; in 1936 \$4,966.37; in 1937 \$3,448.71; in 1938 \$8,381.10 and in 1939 \$1,028.22. The interest received annually was reported on my income tax returns. The Joint Stock Land Bank went into receivership prior to 1931 and since then dividends have been paid, reducing my principal claim. In 1934 \$1500 was paid; in 1935 \$1500; in 1936 \$500; in 1937 \$125; in 1938 \$125 and in 1939 \$150., or a total of \$3900. There was also the Horner mortgage for \$12,000, which was paid in six annual installments of \$2,000 each from 1933 to 1938. I remember a conversation with Agent Wilson some time in 1934 relating to my 1931 return. During the course of that conversation there was a discussion of an item of \$78,000. Such an item appeared on my 1931 return and I told Mr. Wilson that was from gambling. He asked me what I did with the money and I told him I kept probably \$10,000 of it in my pocket and the balance in my box. I did not tell Mr. Wilson that the \$68,000 that I said was in the box was the only cash that was in my box. It was not the only cash I had there at that time. I must have had between one hundred forty and one hundred fifty thousand dollars besides that. I have been filing income tax returns since shortly after the war. I do not recall the first year, but it might have been 1920 or 1921, or even 1919. I have always tried to file a true return of my income ever since the first one I filed. I have never intentionally filed a false return for the purpose of evading payment of the proper amount of income tax. I have never discussed the matter of filing my income tax returns with any other defendant in this case. To my knowledge no defendant had any knowledge whatever of my income tax returns and I had none of theirs. I never discussed with any defendant the method of filing returns or anything else with respect to returns. The Curran farm purchase, on which deposits of \$60,000 and \$3800 were made, is a part of the Bon-Air purchase and my Bon-Air investment includes my part of that purchase. The property has been farmed by Mr. Skidmore

since we owned it. He is farming it this year with a crew from the Pine Tree farms.

1342 Mr. Thompson: We offer in evidence Defendants' Exhibits J-3, J-11, J-12, J-8, J-9-A, B, etc. and J-10. We mark the Sunny Acres Farm account books, which are here in Court, Defendants' Exhibits J-13, 14, 15 and 16, but do not offer them.

Cross-Examination by Mr. Hurley.

I know Joseph Conroy and have for probably twenty years. Defendants' Exhibit O-125 looks like his picture. He is a cousin of mine. He lives at 550 Roscoe Street, Chicago, in a building owned by my mother. I have held title to the property but I never received the income from it. It is a twelve-apartment building. I last saw Joe Conroy at the Bon-Air some time this summer. I have never been associated with Conroy in business. He worked for me at the Lawndale Kennel Club back in 1927, but hasn't worked for me since. I do not know what his business is. I heard he was booking horses. I haven't seen Conroy any place except the Bon-Air during the past summer. Our family and the Conroy family visit. I think Conroy was at my farm once in 1937 or '38. I got Exhibits J-11 and J-12 at the Bon-Air Country Club. I originally got them from Mr. Skidmore about the time of their date. His signature appears on the reverse side of the documents to the assignment of title. These documents have been in the files since we bought the trucks. They are part of the files of the Country Club and not of the Catering Company. As distinguished from the Bon-Air Catering Company, which is just an operating company, the Country Club consists of the ownership of the land and buildings and fixtures. Mr. Skidmore and I laid out all of the money for the Country Club and the Catering Company.

The Trucks belonged to Mr. Skidmore and me. The 1343 Catering Company had nothing to do with them. I have seen the Bon-Air Catering Company's books which you showed me. This is the second time I have seen them. There were some books of the Country Club, but I could not find them when I went to look for them. They were left at the Club. I know there were some receipted bills and some books. After I was indicted this Spring I looked for them. There was a book which had

notations in it regarding the moneys that were expended. It was a white book with black corners, something on the order of the one in front of me. I think John W. Geary, also called Bud, made the entries. He acted in the capacity of a cashier at the Club in 1938 and 1939. I think Roy Love originally hired Geary. I don't believe I knew him prior to 1938. I had seen him around but I was not acquainted with him. I found out later that he had worked in some of the gambling houses. He is no relation of mine by marriage. He worked for Roy Love, who was the Lightning Construction Company. Mr. Skidmore and I used to turn over money to Love and Geary would pay the bills for Love. Some times we turned over money to Geary. Love would present his payroll and we would furnish the money to meet it. Most of the time we gave the money to Geary and he would pay the bills that Love approved. Geary was working for the Bon-Air when we turned this money over to him to pay construction bills. Love worked on construction for Mr. Skidmore and me in 1938 and during the summer he was on the Catering Company's payroll part of the time. I have known Love since 1936. I think I met him at the Lincoln Tavern. I had seen him before that around Tom Barnes' place at Kedzie and Lawrence. He was a builder and handy man. It was common knowledge that Skidmore had a half interest in the Bon-Air Country Club. The first time I told anyone that was in 1938. I told several people, Joe Spagat for one. I do not know how many people I told Skidmore owned half the property because it would not come about just that way. Before I made a decision on a contract I would tell the other party that I would have to consult Mr. Skidmore. Bud Geary and Roy Love were others that I told Skidmore owned half. They were employees. Employees would be the only persons I would have occasion to tell about ownership. I was never asked by a Government agent whether Skidmore was interested. I was questioned about the Bon-Air Catering Company and about the ownership of the real estate, but no other names were ever asked or discussed. I did not mention the fact that Skidmore had a half interest in the Bon-Air property. Today is not the first time I have told anyone of Skidmore's interest. I am trying to recall other people to whom I mentioned Skidmore's interest. Sam Rose, the producer, was another. He is another employee. He got

orders from Mr. Skidmore. I can't recall any other persons. It was common knowledge that Mr. Skidmore owned half of the Bon-Air. When the agents were asking me whether I had had any business transactions with Mr. Skidmore I thought they were talking about gambling. The only other transaction I mentioned was the loan of \$37,000. I made to him. I told them nothing about the Bon-Air deal. I did not call the loan a business transaction. I was asked if I owed Mr. Skidmore any money and if he owed me money and I said yes, he owed me \$37,000. There was nothing said about the Bon-Air and I did not tell anything about it. My telling about Skidmore owning a half interest in the Bon-Air was not a matter of feeling whether I should tell about it because I was being asked questions and I was answering them. That wasn't ever asked. The Bon-Air was not even brought up at that 1345 time. During that interview I was not asked about my properties. The questions in the statement are the questions that were asked and I answered them. When they asked the question whether I had any business transactions with Skidmore I thought they were referring to gambling. I was asked that question. But I understood them to say gambling transactions. Whether I had any gambling transactions with Skidmore is what I understood the question to be. All they talked about was gambling. I talked with Agent Sommers about the Bon-Air. Mr. Clifford and Mr. Converse were there. I am trying to recall just how that subject came up. If I remember correctly, Mr. Clifford said to me that the Bon-Air land was not listed in the Bon-Air Catering Company's books and I told him that the land did not belong to the Catering Company. There was something said about ownership of the land and I said I was a part owner, if I recall correctly. There was nothing more said about it. They did not ask me who owned the other part. I did not tell them that Skidmore owned half of the property and I was not asked. If they had asked me who owned the other half I would have said Skidmore. The title to the land stands in my name. When the deeds were delivered to me I signed a quit claim deed back to William R. Skidmore for a one-half interest. I do not know whether that deed has been put of record. I did not record the deeds which put the title in my name. I understood the records showed all of the title in my name, but I have never investigated

the records. I had nothing to do with buying the property or with recording the deeds. When the deeds were delivered to me by Mr. Goldstein I signed a quit claim deed conveying a one-half interest to William R. Skidmore. When Goldstein delivered the deeds to me I did not pay any attention to them. I just took the deeds and 1346 that is all there was to it. Mr. Skidmore asked me to take title to the property. Evidently he did not want the title in his name. He told me that he was going to put the property in my name and I could see no harm in it at that time. I do not know whether Mr. Skidmore's name appeared in the Bon-Air Catering Company's books. This is the second time I have even seen the books. I never looked in one of them. I think I told Mr. Wait that all moneys advanced were to be credited to my account and that Mr. Skidmore's name was not to appear on the books. Mr. Skidmore did not tell me why he did not want his name on the books. I was treasurer of the Corporation and as such had custody of the funds. The books reflect the financial transactions of the Corporation. I hold of record 55 shares of the stock and I actually own 27½. The certificate issued to me was for 54 shares. Mr. Hartigan has a certificate for 20 shares and Mr. Wait a certificate for 24 shares. I never instructed anybody not to put Skidmore's name on the books. It did not come up that way. When the money was laid out I told Mr. Wait to charge the money to me and that Mr. Skidmore and I would settle between ourselves. It was not intended that the construction items should go on the Catering Company's books. That was a mistake. When the auditors were working on the books in 1939 they asked me whether the construction items belonged on the books and I told them to take them off. These items belonged in the construction book which was out at the Bon-Air the last time I saw it. I do not know where that book is. I went out there looking for it and I could not find it. The last time I looked for the book was when the subpoena was issued for the Bon-Air books. That construction book 1347 should show how much was spent at the Country Club in 1939. I do not remember how much was spent on the property in 1939. I know how much was spent in 1938 and 1939. I do not know whether the books you have show any construction entries for 1939. This is the second time I ever saw those books. I think John

Geary made the entries in the Country Club's construction book, but I never saw him make one. What bills came in for construction he used to lay them out on the desk for Mr. Skidmore and me and say so much would be necessary to pay the bills. That is the only way I have of telling about who kept the books. After the bills were paid I imagine the Country Club's books showed the figures. That book and the receipted bills are what I could not find. They should show what was spent at Bon-Air in 1939. The only record of what was spent would be the receipted bills in that construction book and I don't know whether the book alone would show it. I know nothing about books. I do not know what became of the receipted bills. They were left at the Club and I could not find them when I looked for them. I think I mentioned to Geary at the opening of the season in 1940 that I could not find these records. I had not seen him since until a week ago Sunday, when he came out to my farm. I did not talk to him about the books at that time. I told him to go see my lawyer. Later I saw him in Judge Thompson's office. He has not been up there every day since to my knowledge. I saw him up there once a few days ago, but I did not talk to him. He was talking to me about the case out at the farm and wanted to know if he could be of any assistance and I told him to go in and talk to my lawyer. I did not ask him anything about the books nor the receipted bills. I do not know whether that country club book had Skidmore's name in it. I do not know anything about any books.

1348 We knew how much we had to pay as we went along.

As the bills came in we put up the money. That is the way we handled it. We laid out the money that was needed, ten or fifteen thousand dollars at a time. I usually carry that much around with me. I have known Skidmore for about twenty years. I think I first met him at Lake and Robey. The first investment I ever made with Skidmore was the Dells property. I cannot say how often I saw Skidmore during the twenty years that I knew him. After I started buying property with him, I would say that I met him a couple of times a week, maybe oftener. I would see him at his office, or at the Bon-Air. I went to his office a couple of times a week, maybe three at most. He has a scrap metal business on Kedzie Avenue. I do not know how long he has been in that business, nor do I know what other business he has. He was in the saloon

business before he was in the junk business. I had no special business at his office except to drop in on my way in from the farm. It was only about six blocks out of the way. In 1935 I do not remember how often I would be at Skidmore's office, but I did go there. I would just drop by and pass the time of day. Sometimes there would be other persons there. I do not recall right now who they were. Of the defendants I have seen Mr. Wait there. Sometimes he was there when he did not go with me. When he would come in, we three would visit. Sometimes I would see two or three or four people there. I was never there at night. It is possible I have been there when there were more than three or four people present. I know some of the men who work around the junk yard. I know Skidmore's partner Bernstein. I know Orrie Alexander and Sam Sandusky. I have met Doc Williams. I don't know what business he has there. To my knowledge he is not the one who regulates the callers who can go in to see Skidmore.

1349 Q. You have never seen a line-up out there and Doc Williams say "Next" and take them right in?

A. I have not.

Q. You have not seen that line-up of bookmakers out there, and gamblers.

A. No, sir.

Mr. Thompson: We except to the statement of counsel and object to his question.

The Court: Objection sustained.

Mr. Thompson: We move to strike the question from the record.

The Court: Do you expect to show that the bookmakers and gamblers line up in Mr. Skidmore's office.

Mr. Hurley: We can if necessary.

Mr. Thompson: We except to that statement. The Court asked him a question and he did not answer. He makes a statement to which we except.

The Court: I think I will overrule the objection.

Mr. Hurley: Did you know that Skidmore was collecting from persons engaged in gambling in Chicago?

A. No, sir, not to my knowledge.

Q. He never told you that?

A. No, sir, he did not.

Q. You were quite close to him, Mr. Johnson?

A. I know him pretty well, yes.

We own some real estate together and the Bon-Air

Country Club. I have known Mr. Skidmore for twenty years and we have been friends. I visited at his office and I met him on other occasions. There was gambling at the Bon-Air in 1939. We had craps, wheels, 21 and hazard.

Q. And did you discuss with Skidmore the nature of protection out there in Lake County, so that you could operate this gambling room?

A. There was no protection, we just opened up.
1350 Q. Who was the sheriff out there in 1939 at the time you were operating this gambling room?

Mr. Thompson: We object to that as improper cross examination and it is immaterial.

The Court: Overruled.

The Witness: Kennedy I believe. I am not sure.

Q. Did you talk to the sheriff about the gambling that was being carried on in the Bon-Air?

A. No, sir, I did not.

Q. Did you and Skidmore talk about this Waukegan Post?

A. No, sir.

Q. Who owns that?

A. That I don't know.

Mr. Thompson: We object to this as improper cross examination, and it is immaterial.

The Court: Overruled.

I do not own any part of it. I have subscribed to it at the request of Mr. Goldstein. I do not know whether he is the owner. I never talked to Mr. Skidmore about the Waukegan Post. I never saw Doc Williams taking subscriptions to that paper out at Skidmore's office, nor anywhere else. I do not know whether that newspaper started about the time the Bon-Air was opened. I do not know when the Waukegan Post started. It was Hartigan's duty to act as floorman in the gambling room at the Bon Air. When Mr. Skidmore and I built the Club it was decided to give Mr. Wait and Mr. Hartigan an interest. Mr. Wait was to take care of the catering end and Mr. Hartigan the gambling end. There was no gambling out there in 1938. There was a gambling room upstairs, but that was not the room that was used for gambling in 1939. The gambling room was not operated upstairs in 1938. I do not know just how much time Hartigan spent in the gambling room at Bon-Air in 1939. I would stop in at the

Club practically every day or night. Sometimes I
1351 would see Hartigan and sometimes I would not. If

Mr. Hartigan was not present Mr. Wait was in charge of the gambling room. Mr. Wait was superior to Mr. Hartigan. I guess you would say that Mr. Hartigan was Mr. Wait's assistant. For this work Mr. Hartigan got twenty shares of stock in the Bon-Air Catering Company. This stock was issued right after the Company was formed in June 1938. The first time I talked with Skidmore about the Bon-Air was in the latter part of December, 1937 in his office. Mr. Wait was there with us. Mr. Skidmore told us that he had purchased the Bon-Air. I had not talked with him about the property before that. That was the first information that I had that I was to be a partner with Skidmore in the Bon-Air. I do not know when the property first got the name of Bon-Air. It had the name when we bought it. On the day that Skidmore told me and Mr. Wait that he had bought the Bon-Air I did not know that I was going to have an interest in it. I had no understanding with him on that day.

Q. Why didn't you open this gambling room at the Bon-Air in 1938.

Mr. Thompson: I object to that as improper cross examination and immaterial.

The Court: Overruled.

A. That I don't know.

Q. Did you discuss the opening of the gambling room with Skidmore?

A. Yes, I did.

Q. What did you say in this discussion about opening the gambling room in 1938?

Mr. Thompson: We object to that as improper cross-examination and immaterial.

The Court: Overruled.

1352 A. I don't recall.

Q. How did you determine to open the gambling room in 1939?

A. We just opened it, that is all.

Q. Had no talks about opening up in 1939 with Skidmore?

A. Naturally, must have, sure.

Q. Do you recall what that conversation was?

A. No, I don't.

Q. Now, you had determined, when you started up out

there in 1938, you were going to open a gambling room, had you not?

A. Yes, that was the purpose.

Q. And you gave Hartigan and Wait shares of stock.

A. Yes, that is right.

Q. And they were going to run the gambling room. Now can you tell us why it was not opened?

Mr. Thompson: Object to that as improper cross examination; immaterial; having been asked and answered.

The Court: Overruled.

A. I don't know. We just didn't open. I don't know of any reason why we did not, but we just didn't open.

There was a room available and gambling equipment was in it. I do not know where the equipment came from. I think it was purchased by Mr. Wait, but I do not know. Skidmore, Wait and I talked about putting in gambling equipment.

Q. And what did you say in that conversation, either yourself, Skidmore or Wait about buying this gambling equipment.

Mr. Thompson: I object to that as improper cross examination and as immaterial.

The Court: Overruled.

A. Just that as we would get some equipment and open up, that is all.

Q. Well, can you tell us why you didn't open up in 1938?

A. No, I don't know the reason why.

1353 Q. Can't tell any reason why you didn't open up the gambling room in 1938?

A. No, I don't remember.

Q. Was there any reason why you didn't?

A. I don't remember what the reason was, or why we didn't. There was a reason, naturally, but I don't remember what the reason was.

When we opened in 1939 we had a new gambling room. It was the old locker room on the main floor. It had been arranged as a gambling room. Mr. Skidmore and I decided on this new arrangement. The construction work was done before the season opened in 1939. I do not know how much money we spent on this construction. We laid a floor, put in some paneling and did some decorating. Nadherney took care of this. We told him to go ahead and fix up the rooms and we would pay the bills. The price was not discussed. After the gambling room was opened in 1939 I

would be in and out. Sometimes I would be there every night and again I would not be there for a week. When I was there I did not give Hartigan and Wait instructions. I had the right to, but I did not. I do not recall that there was a limit on the dice game. I did not pay much attention to it. Mr. Wait and Mr. Hartigan managed the gambling room. I do not recall whether they consulted me about the limit on the dice game. I do not know whether the limit was \$100. I didn't pay a whole lot of attention to the gambling room. I think I purchased the \$20,000 Judd mortgage from the Republic National Bank. It was a mortgage on property at 2040 Hopkins Place. The memorandum on payments I have was kept by my brother Joe. My brother John received the payments and turned them over to me. The memorandum shows payments to John E. Johnson. I had some building bonds and I turned them into the National Bank of the Republic, I think in 1928 and got two mortgages. I have no other records except that of the payments which began in 1933. I do not recall 1354 the person with whom I dealt at the Bank. I paid \$20,000 for the mortgage. I do not recall on what buildings the building bonds I traded were issued. I bought the bonds from the Bank some time prior to 1928. My name does not appear on the memorandum you have. I received the payments and returned the interest for income tax. The mortgage was purchased in my name. I assume that appears on the Bank's records. I know I got the mortgage at the Bank and signed for it when I received it. There should be a record of it. I do not recall what other mortgage I received at the time of the exchange. The Horner mortgage I bought from the Hamilton State Bank. That mortgage has been paid. Those were the only two mortgages that I held in 1931 which had been paid. I bought the Chicago Land Bank Stock many years ago, in 1926 or earlier. I bought it at the Continental-Illinois Bank. I paid \$5,000 for it. I do not remember whether there were coupons. It soon went into the hands of a receiver. The document I have showing the payments is a letter from the receiver. I purchased an interest in the Dells property in the Spring of 1937. I had a conversation with Skidmore about it in the Fall of 1936. He told me that a man had just left who was telling him that the property was for sale and was a good buy. I had known the property. He told me what it could be

bought for and I said it sounded like a good buy and that I was interested in it. After that we purchased the property. I have seen the witness Eli Herman who testified yesterday. I think I first saw him at the Bon-Air Country Club. I do not recall ever having seen him in a gambling house. I do not know whether I ever saw him at Harlem Stables, may have. There were a lot of people there. I never had any conversation with Herman about the purchase of the Dells property and I never paid him \$400 1355 out at the Harlem Stables. I had nothing to do with the purchase of the Dells property until I paid Mr. Skidmore my share, which was a little over \$11,000. I gave Mr. Skidmore \$10,000 in one payment and one thousand and some odd dollars later. I gave him the money in his office. I had no interest in the purchase of the Dells property until I talked to Mr. Skidmore about it. Nothing has been done with that property except Mr. Skidmore tore down some buildings and hauled away the lumber he salvaged and some old lamp posts were taken from it and put up at the Bon-Air. I was at Harlem Stables the night the Graves were there. Jack Sommers, Earl Jackson and my brother John were also there. I was around looking for business and John happened to be riding with me. Gambling was open at the stables at that time. They had a crap game and a couple of wheels going. I do not know how Sommers happened to be there. I know that Hartigan was home sick. I do not know who was in charge that particular night because I was not there long enough. When John and I walked in, I think Sommers told me that there was an argument going on with Jackson in the rear and I think Sommers told Jackson about my brother John being a lawyer. John was just riding around with me. He was not looking for business. We happened in to the Harlem Stables when the Grave boys were there. I think this was my first trip to the Harlem Stables. I knew that it was going to open and I dropped in to see what was going on. I do not remember the date. I cannot recall who told me that the Stables was going to open, but such news gets around. I did nothing about the argument that was going on in the back room. I do not recall one of the Graves asking me who I was. I did not tell him that 1356 it did not matter. If he had asked me if I was Bill Johnson, I would have said "Yes". I did not say to the Graves that night that they were making the place

a ball of fire for me. When I left the Harlem Stables I went to the home of Walter Sass. It may be a couple of miles from the Stables. I think Earl Jackson, Sommers and John rode over in my car. I drove over there because Jackson had asked John to go over with him and help straighten out his trouble. I just happened in to the Stables that evening. I had nothing to do with ironing out the difficulty. I sat in the living room with Sass, while the others were in the dining room. I had no part in the discussion at any time. I did not know whether the difficulty was settled that night. I think it was later. I am not sure. They must have gotten along all right that night from all indications. John acted as attorney for Jackson at the conference. The conference may have lasted forty-five minutes or an hour. We arrived at the Stables after dinner, but I do not recall the time. I went out to Harlem Stables looking for a game and when I found there was no game I did not leave. Hartigan was a friend of mine and I was willing to help him out. I was not there to see that one of my boys was taken care of. It was not the practice of John to drive around with me looking for a game. He just happened to be with me that night. I do not remember when I was next back at the Harlem Stables. I did not give the Graves, or the other people who testified, a quarter at any time. They were wrong when they said I did. I think I purchased the property at 4020 West Ogden in 1931. I paid \$8500 down and assumed a mortgage for \$8500. Later I paid off that mortgage. I don't remember just when. I bought the property about 1931

and the mortgage had a few years to run. The records will show when I paid off the mortgage. I

bought the property for speculation with the expectation of reselling it. I bought the property at 2141 South Crawford in 1929. In round figures I paid ten or twelve thousand dollars for it. I assumed a mortgage on the property but I do not recall the amount. I paid off the mortgage but I cannot say just when. Government's Exhibit E-1 says that it refers to 2141 South Crawford, but that is not my record and I know nothing about it. I do not recall from whom I purchased the property. I may have had some dealings with the Foreman Trust and Savings Bank with respect to it. I do not recollect whether the mortgage was \$5,000 and became due October 9, 1932. I think the amount was \$5,000. I paid it off some time

later. The entire purchase price of 2141 South Crawford and 4020 West Ogden have been paid. I think 9730 South Western Avenue was purchased in the Spring of 1937, about the time of the Dells property purchase. I first learned of the purchase of the Western Avenue property about the time the Dells property deal was closed. Mr. Skidmore told me that Mr. Goldstein had been looking at some lots on Western Avenue and that he thought they were a good buy and wanted to know if I was interested and I told him, "Yes." I made the purchase for speculation. Every piece of real estate I bought was for speculation at the time I bought it. I was buying the property for a rise in price. In round figures the price was about \$10,000 and I paid one-half of it to Mr. Skidmore. I paid him in his office, but I got no receipt. I do not recall the exact amount I gave him, but it was approximately \$5,000. I gave it to him in currency. I did not talk to Creighton about this property at any time. There was considerable activity in the Beverly Hills neighborhood and Mr. Skidmore 1358 and I decided to build on the property. We decided to build a building so that we would get some revenue from it. When we decided to build the building we had no particular use in mind. The type of building we decided to build could be used for a roller skating rink, or a dance hall, or a tavern. It could be used for a gambling house also. I do not recall whether we discussed that use at the time, but we may have. I had no particular tenant in mind when the building was erected and I do not know whether anyone else did. The building and the land cost us about \$35,000. When the land was purchased I stood my half, and when the building was built I stood my half. Mr. Skidmore kept track of the figures. The total investment was about \$35,000. Nadherny was the architect for the building. He showed me a set of plans and I talked with him about them. I told Nadherny to build a building that would be practical for almost anything. I did not tell him to put in a double door system with a little searching room between them. I do not know anything about such an arrangement because I was never in the building after it was completed. I did not tell him to build a building without windows. I do not know whether there are windows in the building. I did not tell him to put a lookout tower on the building, and I do not know that there is a tower on it. I have been up at the Dev-Lin but I do not

know anything about a look-out tower on that building. I did not record the deed that I received for the Western Avenue property. There was no particular reason for not recording it. Goldstein delivered the deeds to me and I thought he had recorded them. I did not examine the deeds. I took them just as he gave them to me and did not know whether they were recorded. I took the deed as

Goldstein delivered it to me and I still have it. Skid-
1359 more and I never discussed whether the deeds should be recorded. Goldstein handled the transaction and I had nothing to do with it except pay my share of the money and receive the deed. I do not recall any conversation with Skidmore with respect to keeping his name out of this transaction. When Agent Sommers asked me who owned 9730 South Western Avenue I told him I owned part of it. He did not ask me who owned the rest of it and I did not tell him. At the time of the conversation with Agent Sommers I knew that Skidmore was under indictment. I would not know whether the grand jury had been investigating Skidmore all the previous summer. I talked with Skidmore after his indictment in September, before I talked with Agent Sommers in November. I do not recall how many times. I cannot say whether it was a dozen times or more. I did not talk to him about his income on the Western Avenue property being kept out of the records, nor did I have any conversation with him at that time about his not having his name appear on the Bon-Air books in connection with the title to the Bon-Air property. I had no conversation with Skidmore on the subject of keeping his name off the records except during construction at the Bon-Air when Skidmore said for me to keep the money in my account. I do not recall his giving me any reason for keeping his name off the Bon-Air books. I was not suspicious of anything at that time and did not ask him. The first time that I recall anybody asking me whether Skidmore owned an interest in the Western Avenue property was here in court. This is not the first time I have told anybody about it. Creighton asked me one time if I was interested in the property and I told him I was and he said, why didn't you tell me, and I told him that it was none of his business. I had this talk with Creighton some
time in the Fall of 1939. I think the conversation oc-
1360 curred at the Bon-Air. I cannot recall just how the subject came up. I remember his asking me whether

I was interested in 9730 South Western Avenue and my saying to him that I did not think it was any of his business. I had known Creighton probably twenty-five or twenty-eight years. I have gambled at the Southland and I have seen Creighton there. The last time I was in the Southland was in 1938, I think, but I do not believe I gambled there at that time. Goldstein told me that Creighton was going to rent the property at 9730 South Western and asked me what kind of a tenant he would be and I told him I thought he would be a good one. I did not talk to Creighton about his renting the property. I have known him many years and we were good friends. He came out to my farm to ride horseback once in a while. I did not mention to him that I was his landlord at 9730 South Western Avenue. It did not happen that way. I did not rent the property to him, Goldstein did. Goldstein turned over to me \$2500 rent in September, 1939. That is the only money I ever received out of the Western Avenue property. Goldstein gave me the cash and I did not give him a receipt. I understood that was my end of the income. I did not ask Goldstein what period it covered. The rent was \$500 a month, but I do not know when the building was first occupied. When Goldstein handed me the \$2500 he did not ask me for a receipt. He gave it to me at the Bon-Air along in the early part of September, 1939. He called some time in the afternoon when I was out there cleaning up and storing things away. Some of the help was at the building, but I do not remember who. I did not know that he was coming out there until he arrived. I do not remember what day of the week it was. He didn't submit any statement to me showing the period the rent covered, nor what expenses there had been. He was to give me a statement later of the taxes and the expenses, but I never received it. I think the first time that

I knew Creighton had spent \$6,000 on the improvement of the building was when Nadherny testified to it here in the courtroom. It may have been earlier, but I learned it from Nadherny. The only reason for purchasing this property and erecting this building outside the city limits of Chicago was for an investment. The building is just across the street, outside the jurisdiction of the Chicago Police Department. I guess it would be within the jurisdiction of the County Police. I know Lester Laird.

Q. How long have you known him?

Mr. Thompson: We object to this as improper cross examination and immaterial. I cannot see what this has to do with Mr. Johnson's income.

The Court: I don't see its relevancy.

Mr. Hurley: Well, it is relevant when he buys a property outside the city limits.

The Court: How is that?

Mr. Hurley: It is shown here that this property is just outside the city limits. It is also shown it is occupied as a gambling house by Creighton after it is erected. Also that this fellow Laird, one of the heads of the County Police and this witness were closely associated.

Mr. Thompson: We except to that statement. We think it is prejudicial.

The Court: I do not see the relevancy.

Mr. Hurley: Well, that is our point.

The Court: Objection sustained.

On December 31, 1939 I had around \$50,000 in cash. I kept it in my vault at home.

Q. At what address?

Witness to the Court: Do I have to give that Judge?

Mr. Thompson: We object to that as immaterial and not proper cross examination.

The Court: What difference does it make?

1362 Mr. Hurley: Well, with no bank accounts, records, or anything here, I think we have a right to go into it. It is a question of concealment as of December 31st, 1939.

Mr. Thompson: This isn't a matter of concealment other than a concealment of assets. He doesn't have to publish to the world where they are.

Mr. Campbell: We have a right to develop his assets over the entire period of this indictment to show accumulation, if there is any.

The Court: Objection overruled.

A. I have a vault at 4224 Hazel Avenue.

Part of the \$50,000 I had was in the vault and part of it in my pocket. I might have had \$40,000 in the vault and twelve or thirteen thousand in my pocket. I did not say I had exactly \$50,000. I do not recall the exact amount. The money was in bills of different denominations, one hundreds and fifties and twenties. Perhaps a few thousands. At that time I think I had \$5,000 of Liberty Bonds. I do not recall

when I bought them. I did not have any stocks. There were still some payments due on the Chicago Joint Land Bank stock. That is all the securities I had. I do not remember when I purchased the Liberty Bonds. To the best of my recollection I told you what cash and securities I had on December 31, 1939. I think I have some old Venezuelan oil stock which I purchased a long time ago. I am not sure whether I still have it. I don't pay much attention to it. I think I had some mortgages on December 31, 1939. There is a mortgage but I don't recall the name of it right now. It is one I have had for a long time. It is the one I got from the National Bank of the Republic when I got the

Judd mortgage. I had no brokerage accounts on December 31, 1939. I think the name of that mortgage is

Keller, but I do not recall the amount. On December 31, 1939 I owned the building at Dearborn and Division, at 2141 South Crawford, 4020 West Ogden and the Sunny Acres farm. I also owned some vacant lots in Beverly Hills, a block east of the Western Avenue property. I bought them back in 1925 or '26. I also own a vacant lot at 147th and Sibley and another on Harlem Avenue in Riverside and some lots in Ford City. It has been so long since I bought these I do not recall when it was. I also own a one-half interest in the Dells property and the Western Avenue property and in the Bon-Air properties. I do not own the Thorndale and Glenwood Apartment Building. I gave that to my brother a year ago. It is a twelve-apartment building and I think it was appraised at \$35,000. It cost me \$60,000 back in 1931. To the best of my recollection I have told you about all of the real estate that I owned on December 31, 1939. I have no interest whatever in the building at 3424 Lawrence Avenue, where the currency exchange was located. I heard Goldstein testify that I gave him the money to buy that property. I also heard him testify to a lot of other things that are not true. There was no truth whatever in his statement about 3424 Lawrence Avenue. I do not know who owns that building. I have never considered opening a bank in that building or a currency exchange. I was never in the Lawrence Avenue currency exchange and I have never done any business there. I never asked anybody to put through any transactions for me at the Lawrence Avenue Currency Exchange and I never asked anybody to go over there to exchange currency or cash checks for me, or to buy any money orders. I seldom had a check. I gambled for cash. If I did have a check,

which would be very seldom, I might ask somebody to cash it for me. If I happened to be in a gambling house I might ask the proprietor to cash it for me. I never made a habit of taking checks. I think Creighton has cashed a check for me a couple of times and Kelly may have cashed a couple of checks for me, but I am not sure. Whatever checks I cashed I have endorsed. I have a bank account at the Continental-Illinois and have had for a good many years. I use that account for paying taxes. I do not think I have used it for any other purpose. I do not recall what balance I had in the account on December 31, 1939. I have never been in the Lawrence Avenue Currency Exchange and I have never done any business there and I have never sent anybody there to do business for me. I know the H. M. Bruns Company. I have ordered flowers from them and I have paid for the flowers that I ordered. I never purchased the money order marked Government X-261. Possibly I gave a bill and the money to Sommers to pay the bill and he may have purchased the money order and sent it to Bruns. The document reads that William R. Johnson is remitting \$36.20 to H. W. Bruns Company, but I never purchased that money order. I often gave Sommers a bill and the money and asked him to take care of it for me and that is what happened in this case. I know H. C. Evans who sells gambling paraphernalia. I know nothing about Government Exhibit X-260 any more than it appears to be a money order made out by the Lawrence Avenue Currency Exchange. William R. Johnson is designated as the remitter, but that would not necessarily be me. I may have purchased some articles from H. C. Evans for charity or bazaars, but I do not recall. I may have sent Curly Couch to buy some such things and may have had them delivered at 4020 Ogden. I do not remember any such transaction, but it is possible. If somebody asked me to buy some paddle wheels, or something for a bazaar or picnic, I might do it for them. I would say my living expenses were around \$10,000 a year. It would not be more than that any year from 1932 through 1939. I took the apartment at 3000

East End Avenue in 1934 and paid around \$165 a month rent. I do not recall exactly how long I paid that amount of rent. I had three different apartments and the rent was different. I think the top I paid was \$200 a month in 1939 and until May, 1940. The \$10,000 a year living expenses includes my automobile expense. The last car I purchased was a Packard in 1937, I think it was

around \$4,000. I drove my mother's Cadillac in 1939. I did not give her the money to buy that car. My mother takes care of the expenses in the house at the farm and I take care of the expenses outside the house. My farm books will show what my personal expenses are at the farm. My mother paid for the furnishings of the home on the farm. I did not give her any of the money to pay for these things. It was not necessary. Roy Love was in charge of construction at Bon-Air in 1938. He was employed by Mr. Skidmore and me. His Company was the Lightning Construction Company. I do not know whether it was incorporated. I had known Love during the years 1935, '36 and '37, but I do not know what he was doing during that period. I have seen him do some work around some gambling houses. I had never seen him constructing any buildings. At the Bon-Air Netherly was in charge of the building and Love was in charge of the workmen. Sometimes we gave Love money to pay construction bills and sometimes we gave it to Geary. Either I or Mr. Skidmore would give him the money. Love would produce his payroll or other bills and I would turn the bills and the money to pay them over to Geary. We had no special routine so long as the bills were paid. Mr. Skidmore and I hired Love to work with the architect in doing the Bon-Air construction. I knew nothing about

Love's ability to handle that type of construction experience left what I had been told. He had done work for

Sommers and Hartigan and they recommended him very highly. I do not recall anyone else at this time. He had also done some work for me at Dearborn and Division. Mr. Wact handled the money during 1938 and Mr. Geary after that. I do not recall whether Love worked at Bon-Air in 1940. I think he did some cleaning up around the place getting it ready to open. Geary worked there as cashier in 1940. The account of the money paid to Love should be on a construction book, which is the one I am not able to find. I do not know whether Love paid his bills by currency or by check. The bills would be marked "paid" but I would not know whether they would be entered in the construction book. I do not know what bank account Love used for payment of bills. As far as I know Roy Love is the Lightning Construction Company. I cannot say whether Bud Geary ever had any connection with the Company and I never discussed the subject with him or Love. I paid no attention to the details of payment of bills. I knew they would come back marked "paid." I do not know the sig-

nature of John Geary or of Roy Love. So far as I know the e is no member of Geary's family married to any member of my family. Bernard McGrath, also known as Barney, never worked at the Bon-Air, but I have seen him around different gambling houses. I saw him work at the Horse-Shoe and the D and D, but I do not recall anywhere else. He may have been at the Lincoln Tavern while I was out there, but we never went out there together. He is a cousin of mine and is a brother of Conrad McGrath. I do not recall when I last saw Barney. I know E. M. O'Neill & Co., a dealer in gambling paraphernalia.

Q. Did you know that Barney McGrath had a 50% interest in that Company?

Mr. Thompson: We object to this as immaterial and improper cross examination.

The Court: Overruled.

1:67 Mr. Thompson: We would like to know the purpose and the object of this examination.

The Court: I have ruled.

A. Yes, I know he had an interest. What interest I don't know.

Q. Does not McGrath hold that 50% interest for you?

A. No, sir.

Mr. Thompson: We object to that as immaterial and improper cross examination and move to strike it.

The Court: Motion denied.

Q. Were you present when Mr. McGrath acquired this 50% in E. M. O'Neill & Co.

Mr. Thompson: We object to that as immaterial and improper cross examination.

The Court: Overruled.

The Witness: No, I was not.

Mr. Hurley: How did you happen to find out about it?

Mr. Thompson: I object to that as improper cross examination.

The Court: Overruled.

The Witness: That I don't remember.

Q. Have you any idea at all now how you learned that McGrath had a 50% interest in E. M. O'Neill & Co.

Mr. Thompson: We object to this as immaterial and improper cross examination.

The Court: Overruled.

A. That I don't remember. Somebody told me. I forgot who it was.

Q. Was it your brother Elmer?

Mr. Thompson: I object to that as immaterial and improper cross examination.

The Court: Overruled.

1368 A. I don't recall just how I happened to know.

Q. Did your brother John Elmer tell you that he had formed the corporation by which this 50% interest was acquired by Barney McGrath?

Mr. Thompson: I object to that as improper cross examination and immaterial.

The Court: Overruled.

A. I don't recall whether he did or not. That might have been where I heard it.

Q. Had you know of Barney McGrath working anywhere other than these places that you had seen him around prior to the time that he acquired the 50% interest.

Mr. Thompson: I object to that as improper cross examination and immaterial.

The Court: Overruled.

A. I don't know because I don't know when he acquired it.

I have known the defendant Mackay for twenty odd years. I don't recollect where I met him or what places I have seen him. In the past years I have seen him around many places, but I don't recall any particular place. I never saw him at the Casino, but I have seen him at the Garmead Club, across the street, which was operated by Garrett Meade. Mackay may have been working there, but I don't know. I never saw Mackay in the Casino at 4715 Irving Park Boulevard. I think I was in the place when Meade owned it, but I have not been in there since Mackay owned it. There was no occasion for me to go there. He did not have any crap games that amounted to anything. I do not know who owns that building. I have no interest in it. I do not know whether Skidmore does. He and I are not partners in the ownership of that building. I was in the 1369 safety deposit vault of that building. I rented a box down there. I don't remember when I rented it or how large it was. I had it for only a year. I think it was 1928.

Q. What did you keep in there?

Mr. Thompson: We object to this as immaterial and improper cross examination.

The Court: Overruled.

A. Kept money in there.

I did not visit this box very often. Perhaps I was there

four times during the whole year I had it. I do not recall whether I signed a card when I visited the box. I do not recall the size of the box, nor whether the rental was \$12 a year. I do not know whether my box was one of the largest boxes in the vault because I did not see the rest of the boxes. My box was a fair size box, but I do not remember its dimensions. I think Goldstein asked me to rent this box. He said the Vault Company belonged to him. This building was convenient to where I live on Hazel Avenue. I do not know whether the building had changed hands about the time I rented the box. I had never been in the vault before I rented the box. I do not know whether Mackay was the cashier at the Casino when Meade ran the place. Mackay is married to a cousin of mine, a sister of Barney McGrath. I hold 55 shares of stock of the Bon-Air Catering Company. 54 is in my name. We practically own the whole Catering Company. There is one share in the name of Hendricks, who is the watchman at Bon-Air. It was issued to Hendricks at Skidmore's request. That share came from Wait's block. One share was originally issued to Dishinger. The only purpose in issuing this share was for convenience. I understood you had to take out your liquor license in the name of a resident of the County. Mr. Skidmore and I 1370 are the owners of the shares in my name. His name does not appear on the records. There is no written agreement between us evidencing the fact that he is the owner of half of this stock. It is just an oral agreement. I purchased Sunny Acres Farm in March, 1937 and paid \$145,000, plus about \$3700 commission. William Goldstein handled the details of the purchase. No one is interested in that property with me. I think there is 878 acres in the farm and I paid for the farm in currency at the Chicago Title and Trust Company. I got the money out of my box at the Northern Trust Company. I walked from the Northern Trust Company to the Chicago Title with that money in my pockets. It was in all denominations. One hundred dollar bills, five hundred dollar bills, etc. Later I bought 107 acres adjoining my farm and paid \$16,050 for it. Goldstein handled the purchase. I think I got in touch with Goldstein at his office in connection with the purchase of Sunny Acres Farm. I told him I wanted him to see what the farm could be bought for. That may have been some time around February 1937. During the course of the negotiations we went to the office of the seller's agent, Mr. Hessler and then we went to a lawyer's office in the Con-

tinental-Illinois Bank Building. We finally agreed on the price of \$145,000, plus commission. I do not recall just how I got in touch with Goldstein about the purchase of the Runga farm. The Bon-Air Catering Company agreed to pay as rent 15% of the profits from operation. In 1939 the Bon-Air made twenty-two thousand odd dollars in the gambling room. That was credited to the Catering Company. I think the auditors listed it as sundry income. They did not want to put gambling on the books. That was my understanding as to how it was entered. I never looked into the books. Neither Wait nor Hartigan got any part of that twenty-two thousand dollars. Neither of these men has received a quarter for his services at the Bon Air. They have been paid no salary. Mr. Wait 1371 paid out some money for the Catering Company in 1938 and we reimbursed him in 1939. I think it was around \$25,000. I got half of that amount from Skidmore and gave it to Wait. As I remember it, Skidmore gave me \$15,000 and I put \$15,000 with it and paid Wait what he had coming and used the balance to pay other expenses. Skidmore and I owned all of the Bon Air property in equal shares. That included the green house, the white house, the Curran farm and the Bon-Air property. For my half of the purchase price and construction work I have spent \$365,000. I got back eleven thousand some odd dollars, which is half of the \$22,000 gambling profits. Skidmore and I split the \$22,000 50-50. The money was simply credited against the moneys that we had advanced to the Catering Company. It quit loser that year. Skidmore and I did not file a partnership income tax return, but we were partners at Bon-Air and at Western Avenue. I received \$2500 rent from 7930 Western Avenue and reported that in my income. We did not file a partnership return. The only return I filed is the one here in court. Government's Exhibit R-13 is the only one I filed for 1939. The Bon-Air Catering Company filed a corporation return. The only return I filed in 1938 was Government's Exhibit R-12.

Mr. Thompson: We object to this line of questioning on the ground that joint owners of real estate owning an undivided one-half interest do not have to file any partnership return, as improper cross examination.

The Court: Overruled.

My tax returns do not disclose that there was a partnership between me and Skidmore. I did not think that was necessary. I do not believe the Bon-Air Catering Company's

return shows anything about Skidmore's interest. His name does not appear anywhere on the Company's books. I recall making a loan of \$37,000 to Skidmore about the first 1372 of March, 1939. I had made him loans on several occasions, but that was the first time I had loaned him a sum of that size. Previously I had loaned him \$500 or so as an accommodation loan. I do not know whether the \$37,000 could be called such a loan. He asked me for the money and I let him have it. I was over in his office when he asked for it and I brought it back to him the following day. He did not give me a note or any other written evidence of the loan. He repaid the money some time later in the summer. I did not give him a receipt. He repaid the loan in cash at his office at 2840 South Kedzie. I do not remember just why I had Radomski prepare my returns after 1935 instead of Brantman. My return for 1936 was prepared by Radomski and the return for '35 was prepared by Brantman. Radomski used to work for me out at the Lawndale Kennel Club. I happened to meet him and asked him what he was doing and he said he was making out some income tax returns and so I had him make mine out. I told Brantman that I was giving my work to Radomski and asked him to turn over his papers. I do not remember whether Brantman was already at work on the preparation of my return. I called Brantman on the phone and told him I was turning my work over to Radomski, to help him out. I do not know who was preparing Skidmore's returns. I did not know that Radomski was. I did not tell the other defendants that I was changing from Brantman to Radomski. I do not know how some of them happened to change at the same time. I never talked to any of the other defendants about changing from Brantman to Radomski, nor did any of them ever talk to me on the subject until afterwards Hartigan told me later that he had had some trouble with Brantman. Government's Exhibit R-10 is my return for 1936 and was prepared by Radomski. It bears my signature. I gave Radomski the figure on the schedule, \$148,300. That represented income from gambling, crap shooting. That represented all the gambling that I did during 1373 the year. The expense items totaling \$3,134.30 were deducted from the \$148,300, leaving \$145,165.70. The amount I made from gambling and the amount I paid for the farm are approximately the same. I filed my income tax report in March, 1937, which is about the time I bought the farm. My return for the year 1937 is R-11 and it was

prepared by Radomski. It bears my signature. It shows total receipts from gambling \$258,375. I gave that figure to Radomski in one sum. The item of expense deducted was \$3,134.30, which is the same amount as was deducted the year before. The figures that made up the sum were given to Radomski by me or my brother when he was making up the return. Attached to the return is a report on the Lincoln Park Building, which was obtained from Tavalin. There is also a schedule as to the Thorndale Glenwood building, which he got from the same place. The schedule shows a schedule of expenses. These items were, auto used in business \$1,854.30; telephone, stenographic postage and office expense \$780; accounting and legal services, \$500; total \$3,134.30. I did not give Radomski these figures in detail. I would say it was about the same as last year. Brantman originally arrived at the figure. The same amount appears on my return for 1938. Radomski prepared that return, R-12, and I signed it. It shows total receipts \$106,400. That was my winnings from gambling, as I already described. I gave Radomski the sum in one figure. I had the figures in this little account book (showing a small book). I am not very proud of it. It is pretty well worn. I showed it to Mr. Campbell. I have monthly totals in there for the year 1936 and also for '37, '38 and '39. When I went to Radomski to have my return prepared I gave him the figures from this little book. Instead of giving him the month to month figures I gave him the total for 1939 of \$259,710. The entry of \$29,800 for January, '39 was arrived at by checking my bankroll at the end of the month. For 1937 instance, if I started out with a \$20,000 bankroll, whatever I had in excess of that at the end of the month was income. I kept these monthly results on a piece of paper and then when I entered it in my book I threw the paper away. The book is the only record I have. R-13 is my return for 1939. It was prepared by Radomski and bears my signature. The figure \$256,710 was given to Radomski in the manner I described from the figures in my little black book. The schedules attached showing other income were made from complete books and records kept on those items of property. There were schedules showing items of income and items of expense as to my buildings and farm. These were made from books and records. I kept my bankroll and the money I used for living expenses separate. I kept the bankroll in one pocket and my spending money in the other. I always have for years. I kept the

bankroll in my pants pocket, or in my side coat pocket on the right side. I kept my expense money in my left hand pants pocket. I knew Tom Hartigan, Jimmie's brother. I think he operates a horsebook somewhere in the neighborhood of 3946 School Street. I have known Garrett Meade for twenty-five years. Before he went up in the neighborhood of Irving Park and Cicero he had a place on Milwaukee Avenue. I never had any interest in any place that he owned. It has been several years since I saw Garrett Meade, perhaps three or four. I remember writing off rent at the D and D Building for space that Kelly was occupying. I do not remember the amount. The records will show what it was. I wrote it off the same as I did for other tenants. He was out of action and I did not want to break him. I remember putting the air-conditioning in at the D and D, but I do not recall whether that was the time I wrote off the rent. I wrote off whatever amount the records show and at the times indicated. Kelly did not pay for the air-conditioning. I put it in to improve the building. I did not raise the rent after putting in the air-conditioning. When I did not receive rent I did not report it as income. I wrote it off, just as I have 1375 charged off a lot of other rents. I recall testifying that I helped between one hundred fifty and two hundred men to get jobs. This would be over a period of years. They would ask me to help them get a job and I would do everything I could to help. I got them jobs in the houses operated by some of these defendants and also from other people. I made a lot of money gambling. I decided to open up Bon-Air because I thought it was a good investment. I did not make \$11,000 out there in 1939. I quit loser. The gambling room made a profit, but the Catering Company showed a loss. I received from the Bon-Air Catering Company \$11,000, which it had made in the gambling room. I never had any knowledge of what these other defendants were making in the operation of their gambling houses. I made no inquiry before I started the gambling room at the Bon-Air. I had enough experience around gambling houses to know what returns it should yield. The Bon-Air was a different proposition from the gambling houses like the D and D. It was a season place, open three or four months a year. Games are operated differently at a season place than at regular gambling houses. The player has to pay a percentage to the house. It is hard to explain unless you understand the business.

The hazard is not as great to the house, operating as we did at the Bon-Air, as it is at regular gambling houses. There was no limit on the games at the Bon-Air. I let a man bet \$1600 one night, that was the highest bet that was made out there. There was no limit on the games when I was there. I do not know whether there was a limit when I was not there. Wait was not working for me. He had a percentage in the gambling room and was using his own judgment and could do as he pleased. Skidmore and I were equally interested in the gambling room, but Wait and Hartigan were in charge and could operate it any way they felt like. I owned a gambling house a good many years 1376 ago, back in the early 20s on Halsted Street. I never owned a gambling house after 1921. I never operated one anywhere in Chicago after that. I never operated anywhere except Bon-Air. I never had any interest in a gambling house other than Bon-Air after the one I had on Halsted Street. I had no interest in one in 1929. I never ran a gambling house at 2141 South Crawford. I am positive about that. I did not during the years 1928, '29 and '30 own a number of gambling houses. I did not operate any gambling house during that period of time. I own the property at 2141 South Crawford, I bought it in 1929. I never ran or operated, or had an interest in any gambling house after 1930 other than Bon-Air. I never operated a gambling house at 4020 West Ogden. I never employed Barney McGrath at the gambling house at 2141 South Crawford. He was never an employee of mine. I recall being in this building in 1932 with Mr. Brantman when some other men were present. I will ask you whether or not this question was asked you at this time and place.

Mr. Thompson: We object to any cross examination about any such statement; improper cross examination and immaterial. This is ten or fifteen years ago.

The Court: When was this?

Mr. Hurley: This was in 1932, and involves property he owned at that time and that he now owns.

The Court: Overruled.

Mr. Thompson: That is no justification for extending the cross examination. It goes back ten years and is immaterial to any issue in this case.

The Court: Overruled.

1377 I do not remember being asked, "You are the sole owner of the gambling house that you run?" and making the answer, "Yes." Nor do I remember being asked

the question, "You don't have any bank account?" and making the answer "No," nor the question, "Do you keep any independent records from your daily sheets, attempting to balance your bankroll at the end of each day?" and the answer "Yes."

Mr. Thompson: We object to all this as improper cross examination.

The Court: Overruled.

I do not remember being asked the question "What games do you play in the gambling house?" and making the answer, "Craps, black jack, horses, bank—play anything you want to play." Nor being asked the question, "How many dealers do you employ?" and making the answer "It varies." Nor being asked the question, "In an ordinary run?" and making the answer, "Offhand, I would say from ten to fifteen. There are always fellows around a place that we can pick up when we need them. You can't say definitely how many."

Mr. Thompson: We object to all this line of cross examination as immaterial. They are laying a foundation to impeach on immaterial matter.

The Court: Overruled.

I do not remember the question: "Are you your own cashier?" or the answer, "No." Nor the question: "Who is the cashier?" nor the answer, "A fellow named McGrath." Nor the question, "You don't retain the same man right along?" Nor the answer, "No, they come and go." I do not remember the question: "Do you run a place at 2141 Crawford?" and the answer, "Yes, sir." Nor the question: "That was in 1929, wasn't it?" Nor the answer, "I guess so."

1378 Mr. Thompson: We don't want to keep interrupting, but we object to all this line of examination as being immaterial and improper examination.

The Court: Overruled.

Mr. Thompson: We ask that the objection stand to every question of this character.

The Court: Very well.

I never remember hearing the question, "Did you operate in the same place in 1930?" Nor do I remember making the answer, "I can't say; I might have had eight or nine places around that time?" I do not remember hearing the question: "In other words, you had one central place and other relief spots." Nor do I remember answering, "I see you know all about it." I have stated that I never saw the

defendant Brown at the Lawrence Avenue Currency Exchange. I first met him at the Ogden National Bank. I did not know that he was living at 4200 Hazel Avenue, which is near where I lived.

Mr. Hurley: The checks to which I referred this morning as X-260 and X-261 are in evidence as X-195-1563 and X-195-1502.

I stated this morning that the \$145,000 I used to purchase my farm was taken out of my box at the Northern Trust Company. I cannot tell you right now how much was left in the box after I took that out. I would say it was over \$100,000. I do not remember whether I then had the box up at Irving Park Boulevard. I do not recall how much money I had in that box, nor do I recall how much I put in the box when I rented it. I may have had some papers in there besides my money. I remember moving some money out there, but I do not remember exactly how much. I do not recall how much in excess of \$100,000 I left in the box at the Northern Trust Company after I took out the money to pay for my farm. I counted \$145,000 when I took it out

of the box. I did not have any figure in the box as to 1379 how much was there before I took this money out. I

never kept a memorandum that would show how much money I had in a box. I cannot tell you how much I left in the box, but I know I did not take out the last money I had to buy a farm and leave myself broke. I knew I had plenty of money left, but I don't know how much.

Mr. Thompson: May I have that statement from which you were examining Mr. Johnson?

Mr. Hurley: I don't know whether you are entitled to it.

The Court: What is it?

Mr. Hurley: I don't know whether they are entitled to it.

(Whereupon the following proceedings were had out of the presence of the jury.)

The Court: Now what is it?

Mr. Hurley: I asked him if he was asked certain questions and made certain answers at a certain time and place?

Mr. Thompson: You asked him if he made a statement to certain people. You had a document before you, reading from it.

Mr. Hurley: I had a document; that is true.

Mr. Thompson: I have a right to see that document and make certain whether it is a signed document and have a right to test the thing you were reading from, whether there is any truth in it.

The Court: Is there a motion or an objection?

Mr. Thompson: I was objecting every time he asked a question.

The Court: No, no, now. I say now what is the matter before the Court?

Mr. Hurley: Counsel has asked for this statement. I am objecting to turning it over.

The Court: Objection sustained.

1380 Mr. Callaghan: I move to strike it from the record and ask the Court to instruct the jury to disregard all the examination concerning this alleged statement concerning the year 1929. It is a statement which should have been presented, if at all, on their case in chief. It was not submitted on the direct examination of this witness and was used on cross-examination as an attempted impeachment of him.

The Court: Motion denied.

(Whereupon the following proceedings were had in the presence of the jury.)

Redirect Examination by Mr. Thompson.

I have never seen the statement from which the United States Attorney appeared to be reading and asking questions about the year 1932. I do not remember making any such statement or of ever receiving a copy of it. The farm books which I identified, include all the years 1937, '38, '39. They are all the farm books that I have. I paid the mortgage of \$5,000 on 2141 South Crawford in 1933. The mortgage on 4029 West Ogden was \$9,000 instead of \$8500. I paid \$500 in 1932 and \$8500 in 1933. I filed a gift tax return when I gave my brother the Thorndale Avenue property. The principal items of deduction for automobile expense commented on in cross-examination were depreciation and insurance. They remained the same each year.

Recross Examination by Mr. Hurley.

The automobile expense item includes depreciation, insurance, gasoline and oil. The gasoline and oil might be the same each year.

Mr. Thompson: We renew our offer of DEFENDANTS' EXHIBITS J-8, J-9-A, B, C and J-10.

1381 Mr. Hurley: We object to J-10. There is no proper foundation laid and it is immaterial.

Mr. Thompson: That is the contract under which Mr. Johnson said Bon-Air gas and oil was furnished.

The Court: Has this signature been proven?

Further Examination of Mr. Johnson by Mr. Thompson.

The signature at the bottom of Defendants' Exhibit J-10 is that of William R. Skidmore, who was associated with me at Bon-Air.

The Court: Have you any objection?

Mr. Hurley: There is no proper foundation laid and no connection shown.

(Here occurs a discussion out of the presence of the jury between Court and counsel respecting Defendants' Exhibits J-8 and J-10 and Government's Exhibits X-254 and X-256.)

The Court: I think I will let in all of these papers, if they are offered. The jury can figure out what they mean. The Government's Exhibits X-254 and X-256, as well as those offered by Mr. Thompson will be received.

(Here occurs a discussion between Court and counsel out of the presence of the jury respecting the offer of Defendants' Exhibit J-3, the memo respecting the Dells property purchase. It was received over the objection of the Government that it is immaterial and that no proper foundation was laid for its introduction.)

DEFENDANTS' EXHIBITS J-11 and J-12 were received over the objection of the Government that they were not produced from the proper custody.

1382 T. J. SULLIVAN, being duly sworn, testified as follows:

Direct Examination by Mr. Thompson.

I reside at Oak Park and my business address is 1 North La Salle Street, Chicago. I am a public accountant. I received my accounting training at Northwestern University. After that I had six years public accounting experience, then eighth years as Internal Revenue Agent and now three years with Arthur Young & Co. as a tax accountant. I am a registered public accountant in Illinois and I am admitted to practice before the Internal Revenue Department of the United States Treasury. January 1, 1941 I will be with

Arthur Young & Co. three years. Arthur Young & Co. is a national accounting firm and has affiliated offices in Paris and London. The principal offices in the United States are New York, Chicago, Pittsburgh, Kansas City, Milwaukee, Los Angeles, Dallas and Tulsa. There are eighteen general partners of the firm and our employees varied from 338 to 581 in 1940. I have read the testimony of witnesses in this case relating to the expenditures said to have been made by William R. Johnson during the years 1932 to 1939 inclusive, and I have examined the exhibits in connection with such expenditures. I have made a computation from this testimony and exhibits relating to expenditures. The aggregate of expenditures as computed by me is \$1,298,081.09. My computation differs from that made by the Government's accountant, Frank Clifford. My figure is \$432,310.30 less than his. The items that make up this difference are, Bon-Air \$307,170.23; Lincoln Park Building, \$18,750.00; Albany Park Bank Building \$59,887.05; Dells property, \$7,942.05; 9730 South Western, \$17,757.50; loan to Skidmore, \$37,000; Columbian Gardens property, \$17,500. That makes a total of \$466,006.83. From this I deduct the following items which Mr. Clifford did not include: Interest paid \$1,397.58; purchase of securities in 1933, \$5,000; payment of mortgage on 4020 Ogden \$9,000, and on 2141

Crawford \$5,000, and additional capitalization items 1383 and personal items, \$13,298.95. This leaves a net difference of \$432,310.30. Mr. Clifford charged Mr. Johnson with Bon-Air Country Club at \$660,992.73. Mr. Johnson testified that his expenditures there were \$365,000 and from that I deducted half of the \$22,355 credited at the end of the 1939 season, making Mr. Johnson's net expenditures \$353,822.50. This makes my computation \$307,170.23 less than Mr. Clifford's. The three items which make my computation of Lincoln Park Building expenditures \$18,750 less than Mr. Clifford's is a credit of \$2,250 shown on Government's Exhibit E-9, made to Mr. Johnson when he acquired his second mortgage bonds, and \$8,000 discount made when Mr. Johnson purchased the outstanding \$30,000 of second mortgage bonds, and \$8,500, which is the difference between the \$7,500, which Mr. Johnson said he paid for the equity, and the \$16,000, which Mr. Tavalin estimated. I have eliminated the \$59,887.05 item as to the Irving Park Bank Building purchase because Mr. Johnson denies that he purchased this property. As to the Dells property, the

difference of \$7,942.05 arises out of Mr. Johnson's testimony that he paid one-half of the costs, or \$11,057.95 instead of the item of \$19,000, as testified to by Goldstein. The difference with respect to 9730 South Western Avenue arises out of Mr. Johnson's testimony that he paid one-half of the cost, or \$17,757.50. I have eliminated the \$37,000 loan to Skidmore because it was made and repaid the same year. I have eliminated \$17,500 which Goldstein said that he deposited on Columbian Garden purchases because Mr. Johnson testified that he had made no such deposit and had no interest in the purchases. I have also made adjustments which add to the expenditures made by Mr. Johnson during the period involved. The net total is \$33,696.53. The additions comprise the following: Interest paid on Federal income tax assessments, \$1,397.58; purchase of Government securities in 1933, \$5,000; payment on 1384 mortgages \$14,000; purchase of live stock at the farm in 1939 \$12,964.56 and other personal expenditures of Mr. Johnson for 1939, \$4,645.14. From that total I have deducted an unlocated difference between Mr. Clifford's figures and my capital expenditures at the farm in 1937, amounting to \$4,908.30, less than his figures, and a difference in 1938 amounting to \$597.55 more than his figures. The net difference is \$4,310.75. I have checked the computation of William R. Johnson's net cash income for the period 1932 to 1939, both inclusive. There are some differences between my computations and those of Mr. Clifford. I have computed the total net cash income for the eight years to be \$1,192,066.93, which is \$4,025.08 more than Mr. Clifford's total of \$1,188,041.85. There are three items that make up the difference: Depreciation on Lincoln Park Building for two years \$2500; an item of pro-rated commission expense \$2,172.51, or a total of \$4,672.51. Mr. Clifford allowed an excessive amount of \$642.43 for automobile depreciation, leaving a net difference of \$4,025.08. Mr. Clifford did not assume in his figures that Mr. Johnson had \$78,000 on December 31, 1931 as Mr. Wilson testified, but he started with the figure of \$68,000. In addition to the items which Mr. Clifford credited as cash income to Mr. Johnson, I gave him \$975, the interest on United States securities; \$20,000 derived from the payment of the Judd mortgage; \$12,000 from the payment of the Horner mortgage and \$3,900 collected from the Chicago Land Bank Receiver. Taking into consideration the figures taken from

Mr. Johnson's income tax returns and the other figures I have given, the total cash available to Mr. Johnson during the eight years was \$1,306,941.93. This amount is greater by \$8,860.84 than the expenditures made by Mr. Johnson. Assuming that Mr. Johnson had on hand on January 1, 1932 \$140,000 in addition to the \$78,000 previously assumed, and assuming that he spent \$10,000 a year during the 1935 period for living expenses, the excess of his income over his expenditures for the period would be \$68,860.84 as of December 31, 1939.

Assuming that Mr. Johnson had on hand on January 1, 1932 \$78,000 in cash, he would have had available in cash at the end of that year \$138,345.18. On the same assumption he would have had at the end of 1933, \$163,398.44; at the end of 1934, \$224,167.13; at the end of 1935, \$175,403.67; at the end of 1936, \$281,432.47, and at the end of 1937, \$164,558.05. If we assume that he started out with \$78,000 January 1, 1932, and made the accumulations shown by his income tax returns and made the expenditures as I have testified, his cash position on December 31, 1938 would be overdrawn \$36,458.24. At the end of 1939, on the same basis, he would have had a cash balance of \$8,860.84. Assuming that Mr. Johnson had on hand at the beginning of 1932 \$140,000 in cash, over and above the \$78,000 previously assumed, and assuming that he spent \$10,000 each year for living expenses, he would have had available in cash for investment at the end of 1932 \$268,345.18; at the end of '33 \$283,398.44; at the end of '34 \$334,167.13; at the end of 1935 \$275,403.67; at the end of '36 \$371,432.47; at the end of '37 \$244,558.05; at the end of '38 \$33,541.76; at the end of '39 \$68,860.84. In examining Mr. Johnson's returns for the years 1937, '38 and '39 there are omissions from those returns which under the facts assumed would have reduced the income tax he has paid. In 1937 there was depreciation of \$681 and interest paid of \$1,280.02, or a total of \$1,961.02, which was not claimed. For the year 1938, there was depreciation of \$3,616.37 and for the year 1939 depreciation of \$8,949.31, which was not claimed. If Mr. Johnson had claimed this deduction his tax for 1937 would have been \$127,105.45 instead of \$128,397.72; for the year 1938 \$32,368.59 instead of \$34,530.94 and in 1939 1936 \$124,509.67 instead of \$130,430.52. There would have been a total deduction for the three years of \$2,377.47.

Cross-Examination by Mr. Hurley.

Some of the assumptions I have made are based solely on the testimony of the defendant Johnson. With respect to the expenditures the assumptions are based on Johnson's testimony and exhibits in evidence. The division of the Bon-Air expenditures is based solely on Johnson's testimony. The elimination of the Albany Park Bank Building purchase is solely on his testimony. The elimination of the Columbian Gardens deposit is solely on Johnson's testimony. The figures as to the Dells property is on Johnson's testimony and Defendants' Exhibit J-3. My figures as to 9730 South Western Avenue are based on Johnson's testimony and Goldstein's cross-examination. The repayment of the Skidmore loan in the same year it was made is based on Johnson's testimony. As to the Lincoln Park Building figures, the \$2,250 item is shown by Government's Exhibit E-9 and the \$8,000 discount on the second mortgage and the \$8500 reduction in the cost of the equity is based on Johnson's testimony. I think that is all as far as the expenditures are concerned. As to the assumption that Mr. Johnson had an additional \$140,000 in his box at the beginning of 1932 is based on Mr. Johnson's testimony. I have not taken into consideration the statement of Johnson that he had \$53,000 on hand on December 31, 1939.

Mr. Thompson: We ask to substitute two charts, one to cover the first two columns of Defendants' Exhibit S-28, and the other the third column, as they were received in evidence.

The Court: Any objection.

Mr. Hurley: No.

The Court: They may be substituted.

1387 Mr. Thompson: For the first two columns the substitution will be marked Defendants' Exhibit S-28-A and for the third column the substitution will be marked Defendants' Exhibit K.

Defense rests.

Mr. Hurley: Defendants offered only the name of the account on their Exhibits J-7, A, B, etc. We now offer the remainder of the Exhibits.

The Court: They may be received.

Mr. Thompson: We object to the other matter as immaterial.

The Court: Very well.

Mr. Hurley: We offer GOVERNMENT'S EXHIBITS S-8, 9 and 10, which are the Social Security records of the Horse-Shoe.

Mr. Thompson: We object to them as immaterial. They do not prove or tend to prove any issue in this case and it is not proper matter in rebuttal.

Mr. Hurley: They were testified from extensively. A part of the chart is based on it.

The Court: They may be received.

Mr. Hurley: We offer in evidence GOVERNMENT'S EXHIBITS S-11, 12 and 13, which are the Social Security records of the D. and D.

Mr. Thompson: We object to those as immaterial and improper rebuttal.

The Court: Overruled.

We also offer in evidence GOVERNMENT'S EXHIBITS S-14, 15 and 16, the Social Security records of Creighton.

Mr. Thompson: We object to those as immaterial and improper rebuttal. They are brought into court for the purpose of giving counsel an opportunity to cross-examine from them. The record should not be cluttered up with them.

The Court: They may be received.

1388 ROSE HUEBSCH, being duly sworn on behalf of the Government, in rebuttal, testified as follows:

Direct Examination by Mr. Campbell.

I reside in Chicago and am a stenographer in the Intelligence Unit of the International Revenue Bureau in Chicago. I held that position in 1932. On November 29, 1932 I took a statement of defendant William R. Johnson. Revenue Agent John T. Blocker and Special Agent Tessem and Mr. Brantman, who came in with Mr. Johnson, were present. I took notes of the interview.

Q. On that occasion, was this question asked and this answer given.

Mr. Thompson: We object to this as improper rebuttal and as immaterial to any issue in this case. We call attention to the fact that we have been denied the right to see this alleged statement. Mr. Johnson has never seen it.

The Court: Overruled.

Q. On that occasion, was this question asked, "You are the sole owner of the gambling house that you run? And this answer given, "Yes".

A. Yes.

Q. On that occasion, was this question asked; "You don't have any bank account"? And this answer given, "No".

A. That is right.

Mr. Thompson: If the Court please, I don't want to keep interrupting but I want my objection to the immateriality and improper rebuttal to stand to each question.

The Court: Yes. The record may so indicate and that the objection is overruled.

On that occasion this question was asked: "Do you keep any independent records from your daily sheets attempting to balance your bankroll at the end of each day?" 1389 and this answer given, "Yes." And this question was asked: "What games do you play in the gambling house?" And this answer was given, "Craps, blackjack, horses, bank—play anything you want to play." And this question was asked: "How many dealers do you employ?" And this answer was given, "It varies." And this question was asked: "In an ordinary run?" And this answer was given, "Offhanded, I would say ten to sixteen. There are always fellows around the place we can pick up when we need them. I can't say definitely how many?" And this question was asked: "As the demand calls for the use of them?" And this answer given, "Yes". And this question was asked: "Are you your own cashier?" And this answer given, "No." And this question was asked: "Who is the cashier?" And this answer given, "A fellow named McGrath." And this question was asked: "Who was your cashier in 1929: Gates?" And this answer given, "No, I cannot say offhanded. I don't recall." And this question was asked: "You don't retain the same men right along?" And this answer was given, "No. They come and go." And this question was asked, "Do you run a place at 2141 Crawford?" And this answer given, "Yes". And this question was asked: "That was in 1929, wasn't it?" And this answer was given, "I guess so." And this question was asked: "Did you operate in the same place in 1930?" And this answer was given, "I can't say. I might have had eight or nine places around that time." And this question was asked: "In other words, you had one central place and

other relief spots?" And this answer was given, "I see you know all about it."

Mr. Thompson: We move to strike the testimony as improper rebuttal, and as attempted impeachment on wholly immaterial matter away back in 1929.

The Court: Overruled.

1390 JACOB ROSS, being duly sworn, on behalf of the Government, in rebuttal, testified as follows:

Direct Examination by Mr. Hurley.

I live in Los Angeles, California. At one time I was private secretary to Carl Laemmle. I was his secretary from 1925 to 1939, when he died. In 1936 I accompanied him to Chicago. We arrived on May 7th and left on May 10th. Mr. Laemmle's son and a companion were with us. We stayed at the Drake Hotel. We had a suite of rooms, a sitting room and two bedrooms. The sitting room was between the two bedrooms.

Q. Now, while you were there at the Drake Hotel with Mr. Laemmle, from May 7th to 10th, 1936, was there a Faro game conducted in that suite of rooms.

Mr. Thompson: We object to this as attempted impeachment on a wholly immaterial matter; improper rebuttal as to matters wholly disconnected with each and every defendant in this case except defendant Wait.

The Court: You may step into the jury room ladies and gentlemen.

(The following proceedings were had outside the presence of the jury:)

The Court: Tell me what you expect to prove.

Mr. Hurley: We expect to prove that this game was not conducted in the Drake Hotel, but that through phone calls and a visit to the Villa Moderne, he learned that the game took place there. He wrote out the checks that were mailed to defendant Wait from California.

The Court: What is the materiality as to where this game took place.

Mr. Hurley: It shows the game took place at the Villa Moderne, where Wait said he was running the place, which we contend he was running in connection with all
1391 these places. Furthermore, according to the testimony of Agent Ruggaber, Wait said that he never

got this money. Now Wait takes the stand and says that he did get the money. Also Sommers' endorsement appears on the checks.

Mr. Thompson: My position is that if any of this is material it was a part of their case in chief, to prove where this gambling took place and any other matters connected with it. I think it is not material and have so contended since the matter came up. There is no proof that connected anybody with the Villa Moderne except Wait. Mr. Wait had to speak on the subject of the checks to answer the witness Ruggaber, otherwise the matter would not have been presented as part of the defense. Defendant Wait merely answered the Government's proof. The proffered testimony does not impeach anything material. The I.O.U. that was given to Mr. Wait was held by him until he received the checks through the mail. The fact that Mr. Laemmle gambled at a particular place seems wholly immaterial. I do not recall the witness Ruggaber said that Mr. Wait said that he did not get any of this money. As I recall it, he reported Wait as saying he did not win all of this money and Mr. Wait so testified on the stand. I do not see how it can possibly be material to the question whether there was a scheme on the part of Mr. Johnson to evade the payment of income tax. If they proposed to prove that these winnings were a part of Mr. Johnson's income they should have put that proof in in the first instance. It is not proper rebuttal.

The Court: If the only question here was where the gambling took place, I think I would sustain the objection on the ground that one cannot impeach on an immaterial matter, but apparently that is not the only question involved. Objection overruled.

1392 Mr. Thompson: This witness is not going to prove who got the money.

The Court: Circumstantial evidence. Objection overruled. Bring in the jury.

(The following proceedings were had in the presence of the jury:)

No Faro game was conducted in the suite of rooms at the Drake during the time I was there with Mr. Laemmle between May 7th and 10th, 1936. I was in the suite all the time that Mr. Laemmle was there. I know a man named VonRuakel. He and Mr. Laemmle went out together May 7th or 8th, 1936.

Q. Do you know where they went on that occasion?
Answer yes or no.

Mr. Thompson: We object to that.

The Court: Overruled.

A. I did not know where they went when they left the hotel.

Q. Did you later learn where they went?

A. Yes, sir.

Q. Where was that?

A. Villa Moderne.

Mr. Thompson: We object to that as immaterial and improper rebuttal.

The Court: Overruled.

The party left the Drake Hotel around the dinner hour. I saw Mr. Laemmle the next morning at the Villa Moderne. When I discovered that Mr. Laemmle was not in the suite the following morning I telephoned the Villa

Moderne and learned that Mr. Laemmle was there. I 1393 got a taxicab and went out there and found him there with Ike VonRunkel and some other people belonging to the establishment.

Q. What did you do after you met Mr. Laemmle and Mr. VonRunkel at the Villa Moderne?

Mr. Thompson: We object to that as immaterial and improper rebuttal.

The Court: Overruled.

A. I waited until he was through, remained in the same room with him. He was continuing his play.

Q. How many were there in that game, if you know?

Mr. Thompson: We object to this as immaterial and improper rebuttal.

The Court: Overruled.

A. He alone was playing.

The Witness: Mr. Laemmle, Senior, was the only one playing. I remained there probably less than an hour. We left some time before noon. We took a taxi and returned to the Drake Hotel. After that I drew these checks. They are in my handwriting except for Mr. Laemmle's signature.

Q. And the checks are dated one week apart. Can you tell us why that was done.

Mr. Thompson: We object to this as immaterial and improper rebuttal.

The Court: Overruled.

Mr. Thompson: We certainly object on behalf of all

the other defendants except Mr. Wait, having no connection whatever with any of them.

The Court: What do you say about that?

Mr. Hurley: We expect to show the signature of Sommers to show that they were cashed there, even with Wait's testimony, that connection is there; he had some part of it.

The Court: What year was this?

Mr. Hurley: 1936.

The Court: Overruled.

1394 The Witness: Dating the checks a week apart was for the convenience of Mr. Laemmle. It was always accorded him. I prepared the checks shortly after I returned to California. After Mr. Laemmle signed them I mailed them directly to Wait, asking him to return the I.O.U. which had been given to cover Mr. Laemmle's losses at the Villa Moderne. Mr. Laemmle gave the I.O.U. on the occasion I was at the Village Moderne with him. Government's Exhibits O-219 to O-227 are the checks which I mailed to Mr. Wait. The I.O.U. was returned.

Cross-Examination by Mr. Thompson.

Mr. Laemmle destroyed the I.O.U. upon its receipt. I did not think we should keep it because the Government might want it some day. Mr. Laemmle thought the I.O.U. was of no use after he drew the checks. That was his habit for many years. He was a regular gambler. I do not know whether he had previously gambled with Mr. Wait when he came to Chicago. I know where I was on May 5, 1937. I have a memorandum here. I can also tell you where I was on May 6, 1939. Last Tuesday I was here in Chicago. On this trip I got out to the Villa Moderne before noon, probably around nine or ten o'clock. I do not know the precise hour. I stayed there about an hour. I do not know the time when we left. Mr. Laemmle's son was with me. I do not know the taxicab driver who took us out there, nor the number of his cab. Mr. Laemmle and his son and his friend Von Runkel returned to the hotel with me. I was in the Hotel Drake suite continuously while I was in Chicago. Mr. Laemmle was not. He was out from time to time. He was out all night the night before. I do not know whether he was out two nights or one night. He was not out all night

the next night. I know that he was out all night
1395 one night because I got up in the morning and he
was not there. We were occupying the same bedroom. When I awakened about eight o'clock I saw that Mr. Laemmle had not returned. His bed had not been disturbed so I got disturbed. There was nothing unusual about Mr. Laemmle being out all night. Mr. Laemmle was not here on motion picture business. He had retired. He was here on a pleasure trip. I do not know whether he came here to play Faro with his old pal, Mr. Wait. I do not know that he and Mr. Wait had been friends for twenty years. I had not heard of Mr. Wait until this trip. People with whom Mr. Laemmle generally played granted him the courtesy of letting him make his checks out in series, one week apart. This was the first experience I had had with Mr. Wait. I do not know whether Mr. Laemmle was up at 430 North Michigan Avenue a whole afternoon during the time he was here. I do not know where he was in the afternoon. I never heard of the Pent House. I do not know whether Mr. Laemmle was up there gambling. I heard of the Villa Moderne because when Mr. Laemmle and Mr. Von Runkel went there, Mr. Von Runkel called me and left a telephone number with me. That was in the evening that they went there. They did not have dinner at the Drake Hotel that evening. I do not know where they had dinner. I remember these dates by looking at my dairy. It is just a personal record of trips which we made. I kept it out of curiosity because we were making some necessary trips. Looking at this dairy it shows that we left Reno for Los Angeles on May 6, 1937. On May 10th we were in Los Angeles. We were there from May 9th to May 15th, 1937. I figure that we were in Los Angeles on May 10th because we arrived there on May 9th and we left for some other point on May 15th. Mr. Laemmle had retired completely in 1936 and was drawing no salary. Gambling debts were paid by
checks dated a week apart for his own convenience.
1396 He preferred to have payments of this kind made
in nominal sums a week apart.

The Court: Don't you think we have about exhausted the possibilities of this subject.

Mr. Thompson: Yes, I think so.

The Court: What is your best judgment?

Mr. Thompson: My best judgment is we exhausted it before we started. I move to strike all this testimony

from the record as having no bearing on this case and as hearsay to the defendant Johnson, and no connection with him.

The Court: Motion denied.

Mr. Hurley: We offer the original checks and ask to substitute the photostats, which are already in evidence.

The Court: Any objection.

Mr. Thompson: No objection to the substitution. The checks are immaterial and improper rebuttal and hearsay as to every defendant in this case, except possibly Wait.

The Court: Objection overruled.

The Government rests.

The foregoing with the exhibits identified, was all the evidence offered and received on the trial of this cause.

(The following proceedings were out of the presence of the jury:)

Mr. Thompson: We move to withdraw a juror and declare a mistrial on the ground that the Government in the cross examination of Mr. Johnson insinuated that Mr. Skidmore, his business associate, was a political fixer and that Mr. Johnson was the gamblers' collector of this community; and also insinuated in the cross examination of Mr. Johnson that he was bribing the Chief of the County Police; and because of other insinuations by their questions on cross examination of defendant's witnesses, none of which has been proven nor which could be proven.

The Court: Motion denied.

1397 Mr. Thompson: Now we move that the Court direct a verdict of not guilty as to the first count of this indictment, as to each of the defendants severally.

The Court: Motion denied.

Mr. Thompson: And the same motion as to the second count.

The Court: Denied.

Mr. Thompson: The third count.

The Court: Denied.

Mr. Thompson: The fourth count.

The Court: Denied.

Mr. Thompson: The fifth count.

The Court: Denied.

The Court: That was a motion, I suppose, on behalf of each defendant severally.

Mr. Hess: That is right.

The Court: And for a finding as to each count severally.

Mr. Thompson: A motion severally as to each defendant on each count severally.

The Court: They are all denied and exceptions allowed.

Mr. Thompson: Now we move to strike the testimony of the witness John W. McGinnis, President of the Deerfield Bank.

The Court: It may be stricken.

Mr. Thompson: We move to strike the testimony of Frank Lutz, who was a teller at the Deerfield Bank.

The Court: I think his testimony may go out.

Mr. Thompson: You have already ruled on my motions to strike the grand jury testimony of the witness Brown, and I do not want to burden you, but it seems to me that under the authority which I showed your Honor that this testimony is not an act in the course of the conspiracy.

1398 The Court: If that is the law we cannot try a conspiracy case without error. It does not sound like good law to me. So you take that point up.

Mr. Thompson: Now then in the records of Nationwide News there appears on some of the accounts some handwriting, which is pure hearsay. There wasn't the slightest attempt to make any proof as to how that matter got on the records. For instance, here is the customer's account of Flanagan and written across the corner of the sheet is the words "Bill Johnson's book."

The Court: It is a question of weight. The statute says so.

Mr. Thompson: Surely somebody cannot write memoranda on books and bind us by them.

The Court: The statute is plain.

Mr. Thompson: I move to strike the two currency exchange money orders which were used in the cross-examination of Mr. Johnson. They are purely hearsay as to Mr. Johnson.

The Court: Denied.

Mr. Callaghan: We move on behalf of each defendant that the Government be required to elect upon which count or counts of the indictment it will proceed.

The Court: Denied.

Mr. Callaghan: More specifically, we move to require the United States to declare whether it will proceed under the first four counts of the indictment, or under the fifth

count of the indictment on the ground that each of the counts charges a conspiracy.

The Court: Denied.

And thereupon the attorneys for the Government and for the defense argued the case to the jury.

Thereupon the Court gave to the jury the following charge:

1399 The Court: Ladies and Gentlemen of the Jury:

It is the duty of the Court to deliver to you instructions for your guidance in the consideration of the evidence and in your deliberations upon this case.

The instructions which the Court will give you, in so far as they pertain to the principles of law applicable to this case, must be accepted by you as a binding control and guide in your consideration of the evidence and in your
1400 deliberations.

The responsibility rests upon you to determine the facts of this case, under the law as the Court may give it to you, uninfluenced by any expression of opinion that the Court has made or may hereafter make upon matters of fact. The Court has not intended at any time during the trial of this case, and does not intend at any time to express any opinion on any matter of fact, and if the Court has expressed or does express any opinion on any matter of fact you are at liberty to disregard such opinion, and it is your duty to disregard it, if it is different from your own opinion.

This is a criminal case, and the law in such cases is that a defendant comes into court presumed to be innocent, and that presumption protects him until such time, if such time shall come, when the jury shall believe from the evidence in the case, beyond a reasonable doubt, that the defendant is guilty as charged in the indictment or some count thereof.

The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but,
1401 on the contrary, before there can be a verdict of guilty you must believe from all the evidence, and beyond a reasonable doubt, that the facts proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you should adopt the former.

The defendants on trial have pleaded not guilty. The law does not require any defendant to prove his innocence. The burden of proving the charges in the indictment rests

upon the Government, and you cannot find the defendants guilty unless, from all the evidence, you believe them guilty of the offenses charged in this indictment beyond a reasonable doubt.

If you believe from the evidence that any witness in this case has knowingly and wilfully testified falsely on this trial to any matter material to the issues in this case, you are at liberty to disregard the entire testimony of such witness, except in so far as it has been corroborated, if you find it has been corroborated, by other credible evidence or by facts and circumstances proven on the trial.

Your verdict in this case must be reached from a consideration of all the evidence in the case, but if any evidence was admitted and was later stricken out, you must wholly disregard such evidence as was stricken out.

During the trial of a law suit it often become the duty of counsel for the parties to object to questions, or to evidence, and I instruct you that you shall not take into consideration against such party either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections against the parties.

The fact that an indictment has been returned is not evidence; nor is the indictment evidence. The indictment is not to be treated by you in any way as raising a presumption of guilt or creating any kind of prejudice against these defendants, or any of them. The indictment is simply the form or manner prescribed by law for preferring a charge against an individual, and must be regarded in that light, and in no other light.

1403 A reasonable doubt is what the term implies,—a doubt founded on reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious or speculative. It means, simply, an honest doubt that appeals to reason and is founded upon reason. If, after considering all the evidence in the case, you have such a doubt in your mind as would cause you, or any other reasonably prudent person, to pause or hesitate before acting in a grave transaction of your own life, then you have such a doubt as the law contemplates as a reasonable doubt.

You are the sole judges of the credibility and the weight which is to be given to the testimony of the witnesses who

have testified upon this trial. In weighing the testimony of each witness you should carefully scrutinize the same; consider all the circumstances under which the witness testifies; his demeanor on the stand; the relation which he bears to the Government or the defendants; the manner in which he might be affected by the verdict; the extent to which 1404 he is corroborated or contradicted by other credible evidence, and, in short, any circumstances that tend to throw light upon his credibility. And, applying these tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

During the trial, evidence has been admitted only as to certain defendants. You may consider that evidence, so limited, only as to those defendants, and not as to other defendants.

The statement of the defendant Sommers made on December 29, 1939, was received against him alone, and is to be considered against him alone.

The statement of the defendant Hartigan which was made on December 28, 1939, was received against him alone, and is to be considered against him alone.

The statement of the defendant Kelly made on January 3, 1940, was received against him alone, and is to be considered against him alone.

The testimony of the defendant Brown before the 1405 Grand Jury was received against him alone, and is to be considered against him alone.

The statement of the defendant Brown to the Witness Clifford that he, Brown, destroyed the records of the Lawrence Avenue Currency Exchange, if it was made, is admissible only against the defendant Brown.

During the course of the trial, declarations, statements and conversations of one or more of the defendants, made out of the presence of the other defendants, have been admitted in evidence.

Under the first four counts of the indictments, the declarations, statements and conversations of one or more defendants, made out of the presence of the other defendants, are not binding upon any other defendant, and must not be considered by you against any other defendant or defendants.

Under the Fifth Count of the indictment, the rule in respect of declarations, statements and conversations made

out of the presence of the other defendants is as is
1406 next hereinafter stated. The declarations, statements
and conversations of one or more defendants, made
out of the presence of the other defendants, is not binding
upon any other defendant, unless the evidence—not in-
cluding any of such declarations, statements or conversa-
tions other than his own—shows, beyond a reasonable
doubt, that such other defendant was a participant in the
conspiracy charged in the Fifth Count of the indictment
at the time of such declarations, statements or conversa-
tions, and unless, further, the declarations, statements and
conversations were in furtherance of the conspiracy and
made during its continuance. When men enter into an
agreement for an unlawful end, they become agents for one
another and have made a partnership in crime. What one
does pursuant to their common purpose, all do, and declara-
tions, statements or conversations by one in furtherance of
the conspiracy and during its continuance are competent
against all. It is wholly a question of fact for the jury to
determine who, if any, were the members of the conspiracy
charged in the Fifth Count of the indictment, if you find
there was such a conspiracy.

1407 Certain of the defendants have testified on the
witness stand. You have heard their testimony. The
fact that they are defendants does not mean that they
cannot tell the truth. You should weigh the testimony of a
defendant by the same rules that you weigh the testimony of
any other witness. But you should keep in mind that he is a
defendant in the case and, of course, has a vital interest in
the outcome of the trial.

Certain of the defendants did not testify. You are not to
take into consideration, as against said defendants, the
fact that they did not testify. The law gives to a defendant
an absolute privilege to testify or not to testify, as he
deems best. If he does go on the witness stand and testify,
then he is like any other witness. If he does not testify, that
is not in any sense to be taken against him. He is exer-
cising only the absolute right that is given him by the law.
What I mean to say is, that you must give full effect to the
provision of law that the fact that a defendant does not
testify shall not create any presumption of guilt against
him, and must not be taken into consideration by
1408 you against him.

There has been some evidence introduced with ref-
erence to the reputation of certain of these defendants in

their own communities. The circumstances may be such that an established reputation for good character may alone create a reasonable doubt, although without it the other evidence would be convincing. You should take the evidence of good reputation into consideration in determining the guilt or innocence of such defendants. But the mere fact that a defendant may have had a good reputation prior to this time should not be used by you as an excuse to acquit him in this case if you believe, beyond a reasonable doubt, from all the evidence in the case, including the evidence of good reputation or good character, that he is guilty as charged in the indictment.

There are two kinds of evidence—direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly and without inference from other facts, and is usually given by witnesses who saw, 1409 heard or otherwise observed some particular fact or occurrence. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. For example, if, when you went to bed at night, you saw the ground was bare of snow, and in the morning when you awakened, you saw the ground covered with snow, while you had not seen the snow fall, nevertheless you can infer from the evidence you see, that it has snowed during the night. That is an illustration of what circumstantial evidence is.

Circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged. If the facts and circumstances shown by the evidence in this case are sufficient to convince the jury of the guilt of the defendants, or any of them, beyond a reasonable doubt, then such evidence is sufficient to authorize the jury to find that defendant or those defendants, guilty. The law demands a conviction where there is sufficient legal evidence to 1410 show a defendant's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence.

The jury have a right to weigh and examine the evidence closely and carefully in the light of the common knowledge and experience of mankind, and have a right to take into consideration the common knowledge and experience of mankind in determining whether the evidence is reasonable or unreasonable, or probable or improbable, and in determining what weight it is entitled to receive.

You must not permit the kind of business in which the defendants were engaged to prejudice you against them, or any of them. The fact, if it be a fact, that some defendant or defendants committed some offense against the laws of the United States or the State of Illinois other than those charged in the indictment creates no presumption that such defendant or defendants committed the offenses here charged against him or them.

The charges of the Government are presented in five counts of an indictment, each count averring that the 1411 defendants are guilty of a separate and distinct crime.

The defendants named in the indictment are: William R. Johnson, William R. Skidmore, William Goldstein, Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, Orris Alexander, William P. Kelly, Reginald E. Mackay, Stuart Solomon Brown and Bernice Downey. The case has been dismissed as to the defendants Skidmore, Goldstein, Alexander and Downey, and you are to consider only the guilt or innocence of the defendants Johnson, Creighton, Sommers, Wait, Hartigan, Flanagan, Kelly, Mackay and Brown. The fact that the indictment has been dismissed as to certain defendants should in no way influence you in passing upon the guilt or innocence of the defendants on trial.

The First Count charges that in 1936 the defendant Johnson had a gross income of \$607,399.48 and deductions of \$1,573.84, and that for said year he should have paid an income tax of \$385,316.67; that the defendant Johnson, wilfully and knowingly attempting to defeat and evade 1412 a large part, to-wit \$313,401.32, of said tax, made, under oath, and filed an income tax return for 1936 stating his gross income to be \$163,466.58, and deductions of \$1,573.84, and showing a tax due of \$71,915.35, and no more.

The Second County charges that, in 1937, the defendant Johnson had a gross income of \$880,949.94 and deductions of \$83.74, and that for said year he should have paid an income tax of \$588,634.31; that the defendant Johnson, wilfully and knowingly attempting to defeat and evade a large part of said tax to-wit, \$460,234.59, made, under oath and filed an income tax return for the year 1937 stating his gross income to be \$248,743.92 and deductions of \$83.74, and showing a tax due of \$128,399.72 and no more.

The Third Count charges that in 1938 the defendant Johnson had a gross income of \$959,908.28 and deductions

of \$551.68, and that for said year he should have paid an income tax of \$649,295.01; that the defendant Johnson, wilfully and knowingly attempting to defeat and evade a large part of said tax, to-wit, \$614,764.07, made, under oath, and filed, an income tax return for the year 1938, 1413 stating his gross income to be \$102,498.36 and deductions of \$551.68, and showing a tax due of \$34,530.94, and no more.

The Fourth Count charges that in 1939 the defendant Johnson had a gross income of \$932,571.96 and deductions of \$1,005.06, and that for that year the defendant Johnson, wilfully and knowingly attempting to defeat and evade a large part of said tax, to-wit, \$497,744.33, made under oath, and filed an income tax return for the year 1939, stating his gross income to be \$252,720.53 and his deductions \$1,005.06, and showing a tax due of \$130,430.52 and no more.

Each of said four counts also charges that the defendant Johnson, as a further means of wilfully attempting to evade and defeat said taxes, concealed and caused to be concealed from any and all proper officers of the United States, his gross and net incomes aforesaid, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the sources thereof.

Each of said four counts also charges that the other defendants, Andrew J. Creighton, Jack Sommers, 1414 Edward Wait, James A. Hartigan, John M. Flanagan,

William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown, did unlawfully, feloniously, wilfully and knowingly aid, abet, induce, and procure the said defendant William R. Johnson wilfully and knowingly to attempt to evade and defeat his income taxes for the years 1936 to 1939, inclusive.

Generally speaking, Counts 1, 2, 3 and 4 charge the defendant William R. Johnson with willful attempt to defeat and evade income taxes alleged to be due from him to the United States, and charge the other defendants with aiding, abetting, inducing and procuring the defendant Johnson in his alleged willful attempt to defeat and evade.

There is a law of the United States which reads as follows:

"Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets,

counsels, commands, induces or procures its commission is a principal."

1415 Accordingly, it is the law that one who aids, abets, counsels, commands, induces or procures the commission of a crime is a principal, and you may consider Counts 1, 2, 3 and 4 of the indictment as charging that all of the defendants wilfully attempted to evade and defeat the income taxes alleged to be due from William R. Johnson for the years in question.

The Fifth Count charges that all the defendants conspired to defraud the United States of income taxes due or to become due from Johnson for the years 1936 to 1939, inclusive.

Counts 1, 2, 3 and 4 charge a violation of a law of the United States which reads as follows:

"Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof shall"

be punished in the manner provided by the statute.

The statute, you will observe, makes it a crime wilfully to attempt "in any manner" to evade or defeat any 1416 tax. Accordingly, there are various means that might be used in an attempt to evade or defeat a tax. Counts 1, 2, 3 and 4 charge that the particular means were the filing of false income tax returns by the defendant Johnson for the years 1936, 1937, 1938 and 1939, in which his gross income and net income were understated, and those counts also charge, as a further means of attempting to evade or defeat the taxes on the income of defendant Johnson for those years, that he concealed and caused to be concealed from any and all proper officers of the United States his gross and net incomes, and the sources of said gross and net incomes, and all books and records reflecting said gross and net incomes and the source thereof.

The gist of the offences charged in Counts 1, 2, 3 and 4 is the alleged wilful attempt on the part of the defendants to evade or defeat the tax imposed upon the defendant Johnson by the income tax law.

The word "attempt" as used in this statute involves two elements—first, a wilful intent to evade or defeat the tax, and, second, some act done in furtherance 1417 of such intent.

The "attempt" contemplated by the statute must be a wilful attempt, that is, the attempt must be inten-

tionally and designedly made and with a purpose to do wrong. Even though you should believe from the evidence that the returns filed by the defendant Johnson were incorrect, if you further believe that the defendants, or any of them, acted in good faith in making such returns, then that defendant, or those defendants, are not guilty of the offenses charged in the first four counts. Nor would mere negligence or carelessness, unaccompanied by bad faith, render a defendant guilty under these four counts. The word "attempt" contemplates that the defendants had knowledge and understanding that, during the respective calendar years, 1936, 1937, 1938, and 1939, and defendant Johnson had an income which was taxable and which he was required by law to report, and that the defendants wilfully attempted to evade or defeat the tax thereon, or a portion thereof, by purposely failing to report all the income of the defendant Johnson which they knew he had during such calendar years, and which they knew should have been reported in his return for those years, or that as to the years 1936 and 1937 they concealed and caused to be concealed from any and all proper officers of the United States his gross and net incomes, the sources thereof, and all books and records reflecting said gross and net incomes and the sources thereof.

In this connection, you are instructed that a man may not shut his eyes to obvious facts and say he does not know. He may not close his observation and his knowledge to things that are out in the open, obvious to him, and say "I had no knowledge of those facts." He must exercise such intelligence as he has, and if the evidence shows that the defendants believed that the defendant Johnson was taxable but that they desired and intended to conceal his income from the Government, then, of course, they were not acting in good faith. This question of intent is a question which you must determine for yourselves from a consideration of all the evidence.

1419 As I have indicated, the question of intent is a matter for you, as jurors to determine, and, as intent is a state of mind and it is not possible to look into a man's mind to see what goes on there, the only way you have of arriving at the intent of each of the defendants in this case is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits,

and determine from all such facts and circumstances what their respective intents were at the times in question.

The offenses with which the defendants are charged in counts 1, 2, 3 and 4, involve two principal elements, namely (1) Whether there was due from the defendant Johnson for the years named an income tax in an amount greater than that reported by him, and if you are convinced that such was the case (2) Whether there was a wilful attempt by the defendants, or any of them, to evade and defeat any part of such taxes in the manner charged. First, Was there an income tax due in excess of the amount reported? If

you answer that question in the affirmative, then the 1420 further question is, Was there a wilful attempt on the part of the defendants, or any of them to evade and defeat any part of such tax by the means of filing false returns or as to the years 1936 and 1937 by concealing or causing to be concealed from any and all proper officers of the United States his gross and net incomes, the sources thereof, and all books and records reflecting said gross and net incomes and the sources thereof, as charged in these four counts. As to Counts 1, 2, 3 and 4 you have these questions.

The Government is not bound to prove the exact amounts of income, charged in these counts to have been received by the defendant Johnson, but it will be sufficient to sustain the allegations of these counts, so far as the amount of gross income, amount of net income, and the amount of taxes due thereon are concerned, if any amounts are shown which are in excess of the amounts reported by the defendant Johnson and which show a greater tax was due from the defendant Johnson than those which were shown upon his return.

1421 In making these determinations, it is necessary that you know something of the provisions of the Revenue Acts applicable to the years 1936 to 1939, inclusive, which imposed the taxes involved. During these years, the revenue laws of the United States required that every individual having a gross income for the taxable year of \$5,000.00 or more, should make, under oath, a return, stating specifically the items of his gross income and the deductions and credits allowed by law. The obligation of the law is to report items of gross income specifically,—not simply a gross sum, but items reported specifically, with claims for specific deductions,—so that when the return is made, the proper officials of the tax department of the United States

can form some idea from it as to its accuracy and can more readily check the items reported.

The income tax returns of taxpayers must be made on or before the 15th of March following the close of the calendar year, to the Collector for the district in which is located the legal residence or principal place of business of the 1422 person making the return.

You will observe that only income is taxable. Income is the gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital. The first step in arriving at the income of an individual upon which the tax is imposed is to determine the gross income of the individual. Gross income includes gains, profits, and income derived from salaries, wages, and income of every kind, and from professions, trades, or sales or dealings in property; also from interests, rents, dividends, or the transaction of any business carried on for gain.

After the gross income of an individual is determined, the next step provided by law for arriving at the income upon which the tax is computed, is to deduct from the so-called gross income such deductions as the statute permits. An individual is permitted to deduct from his gross income all the ordinary and necessary expenses paid or incurred

during the taxable year in carrying on any trade or 1423 business, including a reasonable allowance for salaries or other compensation for personal services actually rendered to such individual; also for rentals for the use or possession of property connected with and used in a trade or business; also, taxes paid by the individual in the taxable year; also, interest paid or accrued on indebtedness; also losses sustained during the year for which the individual was not reimbursed by insurance, if such losses are incurred in the trade or business; also, losses sustained during the year for which the individual is not reimbursed by insurance if said losses are incurred in any transaction entered into for profit, although not connected with any trade or business. He is also entitled to make deductions of a reasonable allowance for the exhaustion, wear and tear of property used in trade or business.

Contributions or gifts made by an individual to be used for religious, charitable, scientific, literary or educational purposes, including contributions to organizations of war veterans, are deductible from gross income.

1424 The mere spending of money, in and of itself, does not entitle the individual to a deduction; it is only if he spends the money for one of the purposes allowed by law as a deduction is he permitted to subtract it from his gross income to determine his net income.

A person may spend money; what he spends may or may not be a deduction. If it is one of the deductions allowed in the revenue laws, then it is a deduction; otherwise it is not, regardless of the fact that it is spent.

After such of these deductions from gross income as the individual is entitled to are made, the amount remaining is the net income, and this net income forms the basis of the computation of the income tax.

In determining whether the defendant Johnson received a net income in excess of that reported in his income tax returns for the years in question, you may consider all the facts and circumstances in evidence and view them in relation to each other.

To constitute anyone of the defendants, other than the one charged herein as a principal, an aider and abettor, or 1425 an accomplice, he must take some part or perform some act in connection with the specific offense charged in the indictment, and such participation must be performed pursuant to a common design. The mere knowledge, if there be any, by any of such defendants that a crime is being or is about to be committed cannot be said to constitute such defendant an aider and abettor, or an accomplice. Aiding, abetting, or assisting in the commission of a crime are affirmative in character. To constitute one an aider and abettor he must in some sense promote the venture, make it his own or have a stake in its outcome. It is not sufficient that any of such defendants have a mere negative acquiescence not in any way known to the principal.

Even should you believe from the evidence that the acts and declarations of those persons charged as aiders and abettors were done or made by such persons, you cannot find any of such persons guilty in this case unless you further find that said acts and declarations have been done or made by those persons accused as aiders and abet- 1426 tors with the intention of encouraging, aiding and abetting the defendant, William R. Johnson, in a wilful attempt to defeat and evade his income taxes for the years in question. By that I mean, that it must be proven that the defendants charged as aiders and abettors were

motivated and acted with a felonious intent and in pursuance of a design to aid and assist the defendant Johnson, in wilfully attempting to defeat and evade his income taxes for the years in question.

Before you can find defendants who are charged here as aiders and abettors guilty, you must find beyond a reasonable doubt that they knowingly and wilfully aided and abetted the defendant, Johnson, to attempt to evade his income taxes as charged in Counts One to Four, inclusive, and it is not enough for you to believe beyond a reasonable doubt that they, or some of them, operated gambling houses in concert with each other or with the defendant, Johnson, unless you further believe beyond a reasonable doubt that said concerted operation was knowingly and wilfully entered into for the specific purpose and with the
1427 specific intention of aiding and abetting defendant, Johnson, in attempting to evade and defeat his income taxes for the years 1936, 1937, 1938, and 1939.

In this case it is incumbent upon the Government to prove that the defendant, Johnson, "wilfully" attempted to defeat and evade payment of his income taxes for the year 1936, 1937, 1938, 1939. When the existence of a particular intent forms part of the definition of an offense, as in the case at bar where the offense must be wilful, any person charged with aiding and abetting the commission of the offense, must be shown to have known of the existence of that intent on the part of the principal before such person can be convicted as an aider and abettor.

The Fifth Count of the indictment charges that the defendants, from a period of time extending from on or about January 1, 1936, and for a long time prior thereto, up to and including the date of the filing of the indictment, in the City of Chicago, State and Northern District of Illinois, unlawfully, wilfully, knowingly and feloniously did
1428 conspire, combine, confederate and agree together and with divers other persons to the grand jurors unknown, to defraud the United States of America of income taxes which should become due from the defendant, William R. Johnson, and which did in fact become due to the United States of America from the defendant Johnson for the calendar years 1936, 1937, 1938 and 1939, in the aggregate amount of approximately \$1,886,144.31, which said unlawful conspiracy, combination, confederation and agreement was then and there a continuing one for de-

frauding the United States of America of income taxes which should become due and which did in fact become due under the circumstances, by the means and methods, and

That the defendants would conceal from any and all Internal Revenue Officers the investment, participation and true ownership of William R. Johnson in divers gambling businesses and houses and related enterprises in and about Cook County and Chicago, Illinois;

1429 That the defendants, other than Johnson, Skidmore, Goldstein, Brown and Downey, would open, maintain, and operate for the financial benefit of said Johnson, but under names other than Johnson's, said gambling enterprises or houses, and would thereby conceal and cause to be concealed from any and all Internal Revenue Officers the true ownership by said Johnson thereof;

That the defendants would open, maintain and operate divers currency exchanges, and in particular, the Lawrence Avenue Currency Exchange in the City of Chicago, for the purpose of furnishing banking facilities to the defendant Johnson and the gambling houses, so as to enable the defendant Johnson to conceal from Internal Revenue Officers his financial interest in and net taxable income from said gambling enterprises or houses;

That the defendants, through the Currency Exchanges and divers other places would cause all of the profit and income from said gambling establishments to be converted into currency in such a manner as to conceal the source, ownership and disposition thereof, and to prevent the making of any record thereof, and thereby prevent the agents and officers of the United States from establishing the true gross and net incomes derived from the gambling establishments to the use and benefit of said Johnson; and would conceal and destroy any and all records of the said currency exchanges to prevent their discovery and examination by officers and agents of the United States;

That the defendant would acquire, maintain, and operate, a building in such a manner as to conceal the fact that said building was the headquarters for said gambling enterprises, and, in particular, the fact that said building housed the central point from which certain information relating to horse races and race tracks was transmitted by electrical device, that is to say, by telephone and teletype, to said gambling houses;

That the defendants would file and cause to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, income tax returns for the calendar years 1936 to 1939, both inclusive, for the defendant Johnson, which income tax returns would 1431 contain false and fraudulent statements and items pertaining to the income of said Johnson, especially as to the course of income from gambling enterprises or houses, and would thereby show on said returns a much less net income for each of said calendar years than in truth and in fact said Johnson would and did have for each of said calendar years, and, thereby, a much less income tax due by said Johnson to the United States.

The law of the United States upon which this Fifth Count is based reads, in part and so far as material here is as follows:

"If two or more persons conspire • • • to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be" punished.

It is not necessary, under this conspiracy count, that the Government prove that the defendants defrauded the United States. The charge in this Fifth Count is that 1432 the defendants conspired to do that.

The essence of the offense of conspiracy is the unlawful combination, confederation, or agreement to defraud the United States. To "conspire" means to agree, to combine, to confederate.

It is not necessary, to constitute a conspiracy, that two or more persons should meet together and enter into an explicit and formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be and the details of the plans by means of which the unlawful combination was to be effected. It is sufficient that two or more persons, in any manner or through any contrivance, positively or tacitly, come to a mutual understanding to accomplish the common and unlawful design charged.

In determining whether or not a conspiracy has been proved in this case, you should inquire into what has been done, the movements of the alleged conspirators, their conduct, their accomplishments, if any, together with 1433 all of the other facts and circumstances adduced in evidence in the case and bearing upon that issue.

Your inquiry should be: First, Did the defendants, or some of them, conspire together to do the unlawful acts charged in the indictment? And, Second, if they did so conspire, Did they thereafter, with the view of carrying out the object of such conspiracy, do one thing set forth as an overt act towards such end? If they did so conspire together and take one or more steps, set forth as overt acts, toward the accomplishment of that unlawful purpose, the offense of conspiracy is complete, even though the object of the conspiracy is never attained.

You will observe that the Government and the grand jury have, in this indictment, charged many overt acts. An overt act means an act done for the purpose of carrying out the design, the unlawful purpose, and it must be done by one or more members of the conspiracy, if it has been

found that there was a conspiracy, and must be of
1434 such a character as appears to you to have been done in order to carry out the unlawful purpose. It is not necessary that you find that all of the overt acts charged were performed, but it is necessary that you find that at least one of the overt acts charged was done, and done with the intent of accomplishing the purpose of the conspiracy, before you would be warranted in finding the defendants, or any of them, guilty under this conspiracy count.

The members of a conspiracy need not necessarily know all of the other members of the conspiracy. Of course, it is necessary that they should know some of the members of the conspiracy, but they need not know or be acquainted with or have knowledge that other members who are later members of the conspiracy were in the conspiracy.

A person may enter a conspiracy after it has been formed and before its final completion and assist in carrying out the conspiracy, and thereby be a part of such conspiracy, even though he was not a member of such conspiracy at the time of its inception.

1435 You have been engaged in your service to society—to all the people of these United States,—for a period of six weeks and four days. You have aroused my admiration because of the care and diligence with which you have attended to your duties under considerable disadvantages. You have been confined to your quarters. You have not been allowed to go about the usual affairs and business of your lives. You have not had the exercise to which you are

accustomed. I know that your service has caused some of you considerable inconvenience, and, more than that, perhaps considerable financial loss.

You are now going to climax this period of service. Collectively, you are going to consider and decide this case. In the final stages of this case you are going to make increased use of your minds. Your minds, you know, are made up of at least two parts, your intellects and your emotions. You all know that. What each one of you should use in these final stages of the case, when you go to your jury room 1436 to consider and decide this case, is your intellect. If

each one of you uses his intellect, putting aside his emotions, then the probability of the verdict which you arrive at collectively being fair and just will be very greatly increased.

You have been told—and I tell you again—that it is your duty to consider this case without prejudice, without fear or favor. It is your duty coolly and calmly to determine the question whether these defendants are or are not guilty. To do that you should use your intellects and not your emotions.

It is not a question of whether you like the defendants or dislike them. If you get over on that ground you almost invariably make a mistake. It is not a question of whether you like or dislike counsel on one side or the other. If you get over on that ground you almost invariably make a mistake. It is not a question of whether you like anybody or dislike anybody. It is just an intellectual question of whether these defendants did or did not do certain things.

That is all you have to decide. If you bear that in 1437 mind and try to do nothing other than just that plain, simple duty of answering the question—Are or are not the defendants guilty under the First Count, under the Second Count, under the Third Count, under the Fourth Count, under the Fifth Count, then your labors are much simplified, the probability of your agreeing is very much increased, and the likelihood of your fittingly crowning your labors, which are worthy of commendation at this moment, is very greatly increased and your service to the Community will be worth while.

You have only one duty to perform, and that duty is to tell the court whether or not these defendants are or are not guilty as charged in the indictment.

Under no circumstance need you consider the matter of

punishment. That is a matter committed to the attention of the Court alone.

You must consider each of the statements which I make to you not merely in itself, but as related to all other points covered by the charge. In other words, you must consider my charge as a whole.

1438 When you go to your jury rooms you will take with you the indictment, the exhibits which have been offered and received in evidence, and four forms of verdict.

The first form which you will take reads as follows: We, the jury, find the defendants, naming them, not guilty as charged in the indictment. If you find all of the defendants not guilty on all of the counts of the indictment, the twelve of you will sign that form and return it into court.

The next form which you will take with you reads as follows: We, the jury, find the defendants, naming them, guilty as charged in the indictment. If you find all of the defendants guilty on all of the counts in the indictment, you will use that form, the twelve of you will sign it, and return it into this court room.

The third form which you will take with you reads as follows: We, the jury, find the defendants William R. Johnson, alias W. R. Johnson, alias Bill Johnson, guilty as charged in the "blank" count of the indictment, and

1439 we find the defendant not guilty as charged in the "blank" count of the indictment. And then a like statement is repeated for each one of the defendants. The next statement relating to Mr. Creighton, the next to Mr. Sommers, the next to Mr. Wait, the next to Mr. Hartigan, the next to Mr. Flanagan, the next to Mr. Kelly, the next to Mr. Mackay, and the last to Mr. Brown.

If you use that form, if this form best suits the conclusion to which you come, use this form, fill in the blanks so that you accurately state on which counts you find each one of the defendants guilty and on which counts you find each one of the defendants not guilty; and let me caution you that after you have made up that form go over it carefully and see that you have disposed of the case as to each defendant on all of the counts.

After you have done that, and if the form then correctly expresses the conclusion at which you have arrived, the twelve of you sign the form and return it with you into court.

The last form which you will take with you reads as

follows: We, the jury, find the defendant "blank"
1440 guilty as charged in the indictment; and we find the
defendant "blank" not guilty as charged in the in-
dictment. If you find one more of the defendants guilty
as charged in the indictment, and if you find one or more
of the defendants not guilty as charged in the indictment,
fill in these blanks indicating which of the defendants you
find guilty and fill in the blanks indicating which of the
defendants you find not guilty. See that you have made a
finding as to all of the defendants. Then if the form cor-
rectly expresses the conclusion to which you have arrived,
the twelve of you sign the form and return it with you into
court.

Are there any suggestions in respect of or objections to
the charges given by the Government?

Mr. Hurley: None.

The Court: By the defendants?

Mr. Thompson: If the Court please, we have no objec-
tion to what your Honor has charged the jury. We have,
of course, made some requests which are not included
1441 in the charge, and want to call attention to those in
this sense—I assume your Honor has before you the
requests?

The Court: I have them all and I tried to cover them all,
Judge, except--

Mr. Thompson: Except those which related to the in-
come tax returns--

The Court: To certain specific items in evidence.

Mr. Thompson: That is right.

The Court: You may have exception to my failure to
give any of the requests which you submitted.

Mr. Thompson: I understood that was to be the rule.

Now, we also object to there being sent to the jury room
those exhibits to which we have objected and moved to
strike from the record.

The Court: That objection will be overruled. What is
the Government's attitude?

Mr. Hurley: Well, my understanding is that all the ex-
hibits should go.

The Court: That is my understanding. Those of them
that have been received in evidence.

Mr. Hurley: Yes.

1442 The Court: You may swear the marshals, Mr.
Clerk.

(Marshals sworn.)

The Court: The alternates may be discharged from further service. The alternates have the thanks of the Court for your service during these weeks.

When you go to your jury room I suggest in order that your procedure may be orderly, that you select a foreman from amongst your number who will act as a moderator over your deliberations. You may depart now with the marshals and consider of your verdict.

Assemble your exhibits, will you, gentlemen, and give them to the marshal.

1443 And thereupon the defendants severally requested the Court to include in his charge to the jury the following instructions, and the Court refused said requests, and the defendants severally excepted to said refusal.

5. The prosecution and each defendant separately considered are entitled to the individual opinion of each juror on the issues of fact in this case. It is the duty of each of you to consider and weigh all the evidence in the case and from such evidence to determine for yourself, if you can, the question of the guilt of each defendant as to each count of the indictment. When you have so determined that question, you should not be influenced in giving your verdict by the mere fact that any number or all of the other jurors may have reached a different conclusion. If, after careful consideration of all the evidence, your mind is fairly made up, and you are convinced you are right, it will be your duty to stand by your decision. But each juror should freely and fairly discuss with his fellow jurors the evidence and the deductions to be justly drawn therefrom. If, after such a full and fair discussion with them, any juror is still satisfied that his decision is right, he is under no duty to change his decision.* But if, after such full and fair discussion, any juror is satisfied that his original decision was wrong, then he should unhesitatingly abandon such decision, and render his verdict according to such final decision. No member of this jury should vote for a conviction of any defendant because of the opinion of another member of this jury so long as he conscientiously entertains a reasonable doubt as to the guilt of such defendant.

8. Where the facts of the case, considering the evidence as a whole, are susceptible of two reasonable interpretations, one pointing toward the guilt and the other toward

the innocence of a defendant, it is your duty to give such facts that interpretation which accords with the innocence of such defendant. If there is any reasonable
1444 hypothesis based upon a fair consideration of the whole evidence in the case upon which you can acquit a defendant, then it is your duty to adopt such hypothesis and to find such defendant not guilty. If, upon a consideration of all the evidence, a reasonable doubt of the guilt of any defendant arises, you must acquit such defendant.

10. The burden of proof is upon the prosecution. This means that the prosecution must prove the offenses charged against each of the defendants, considered separately, and must establish each and every material element of such offenses beyond all reasonable doubt as to each defendant. If the prosecution fails as to any such element as to any defendant, either because there is no evidence supporting such element or because the evidence offered in support thereof does not satisfy you beyond all reasonable doubt as to any defendant, then you should acquit such defendant for the reason that the prosecution has failed to establish his guilt as required by the law.

16. A defendant in a criminal case is not called upon to prove his innocence, nor need he do so in order to secure an acquittal. An acquittal must necessarily occur unless the prosecution has proved the defendant's guilt beyond all reasonable doubt. A mere suspicion, or even a strong probability of the defendant's guilt would not justify conviction. And even should the evidence in your opinion preponderate in favor of the prosecution, this alone would not justify a verdict against any defendant. A mere preponderance of the evidence is not sufficient to warrant a conviction in a criminal cause. Before you can convict you must be satisfied beyond a reasonable doubt that the facts presented in evidence are incompatible with any reasonable theory of the innocence of the accused and incapable of any reasonable hypothesis than that of his guilt. Otherwise, such defendant must be acquitted.

1445 18. Proof in a criminal case may be circumstantial or direct, or both, but there must be proof worthy of credit. Where the evidence is purely circumstantial, the links in the chain of circumstances must be clearly proved, and taken together must point, not to the mere possibility or even probability of participation in the commission of the offense charged but must establish

the fact of the participation beyond a reasonable doubt. The inferences which may reasonably be drawn from the proved circumstances as a whole must not only be consistent with guilt but inconsistent with every reasonable hypothesis of innocence.

22. In the investigation of matters of fact and in the weighing of evidence, the jury have no right to assume the guilt of a defendant, and then try to reconcile the testimony with such theory. It is the sworn duty of the jury to presume the innocence of the defendant and to give him the benefit of such presumption all through the trial and at every stage of the investigation of the evidence in the jury room, until it is overcome, if it is overcome by a fair consideration of all the evidence. To overcome this presumption of innocence, the evidence must not only be consistent with the theory of guilt, but must be inconsistent with, and exclude, every reasonable theory of innocence. As long as the jury are able to reconcile the evidence with any reasonable theory of the innocence of any defendant, separately considered, the law makes it your duty so to do. If, upon a full consideration of all the evidence in the case, you entertain a reasonable doubt as to whether any particular defendant is guilty of the crime charged against him in any count of the indictment, then you should find him not guilty as to such charge.

23. The fact that the defendant, William R. Johnson, derived a large part of his income from gambling 1446 if you believe this to be the fact, must not be considered by you in determining your verdict. The source of the income of said defendant is altogether immaterial. Likewise the fact that the other defendants, except defendant Brown, were engaged in operating gambling houses must not be considered by you as evidence against them. The questions here are whether defendant, William R. Johnson, wilfully filed false income tax returns with the intention to evade payment of taxes imposed by law and whether the other defendants knowingly aided him in such alleged attempted evasion and whether the defendants conspired to commit this offense. The fact that some defendant may have committed some other offense against the laws of the United States or the State of Illinois creates no presumption that such defendant committed the offenses here charged against him. Whatever other offense any defendant may have committed, he is presumed to be innocent of the charges in this indict-

ment until the contrary is shown by evidence beyond a **reasonable doubt**. You are cautioned to dismiss from your minds any view you may have of the occupation of any defendant and confine your consideration to the question of the guilt or innocence of such defendant of the particular offenses charged against him.

26. Under Count One of the indictment it is alleged that defendant William R. Johnson, on March 15, 1937, filed a return of his taxable income for the year 1936, stating that his net income was \$161,892.74, and that he paid a tax thereon of \$72,640.23, and that he should have reported a net income for the year 1936 of \$605,825.64, and that the tax due from him was \$385,316.67; that said defendant wilfully attempted to evade the tax imposed by law upon his taxable income for said year; and that the other defendants knowingly aided said defendant Johnson in his attempt to wilfully evade the tax due for said year. Before defendant Johnson or any other defendant can

be found guilty under Count One, the prosecution 1447 must prove beyond a reasonable doubt that defendant Johnson did in the year 1936 have a taxable income in excess of that returned by him for said year, and that said defendant Johnson did wilfully attempt to evade payment of the tax imposed by law. Proof merely of a deficiency in the tax due from the defendant Johnson in the year 1936, resulting from error or negligence in making his return is not sufficient. The burden is on the prosecution to show by evidence beyond a reasonable doubt not only that defendant Johnson omitted to make a true return for the year 1936 but that the omission was wilful and done with the intention of attempting to evade payment of the tax imposed by law.

Note: Refused requests numbered 27, 28 and 29 were identical with refused request Number 26 except as to dates and amounts, said requests covering Counts Two, Three and Four respectively.

30. The first question that you should determine in this case is, Did the defendant William R. Johnson have a net taxable income in excess of that which he reported in his income tax return for the calendar year of 1936, as charged in the first count of the indictment, for the calendar year 1937 as charged in the second count, for the calendar year 1938 as charged in the third count, or for the calendar year 1939 as charged in the fourth count? If you are not convinced beyond a reasonable doubt that

the defendant William R. Johnson did have a net taxable income in excess of that which he reported in his income tax return for the years 1936, 1937, 1938 and 1939, respectively, you need not consider the case further and your verdict should be "Not guilty" on the first four counts. But if you answer this first question in the affirmative as to one or more years, you must then determine the question whether said defendant wilfully and knowingly understated his taxable income for such year or years, considering each count separately, with the intent to defeat and evade the payment of the tax due and payable upon his net income for such year or years.

1448 31. If the defendant William R. Johnson owes no tax for any of the years involved, the defendants must be acquitted under the first four counts of the indictment because a taxpayer cannot be guilty of attempting to defeat or evade a tax if no tax is due nor can others aid him in doing what was not done.

37. If under the evidence in this case you have a reasonable doubt that any item alleged to be income of the defendant William R. Johnson for the calendar year 1936, or the calendar year 1937, or the calendar year 1938, or the calendar year 1939, upon which evidence has been received, was income of said defendant for such year, then you will disregard such item in determining the question of what the net taxable income of said defendant was in such calendar year. In determining the net taxable income of the defendant Johnson for any year involved, you may take into consideration only such items as have been proved beyond a reasonable doubt to be income of defendant Johnson in that particular year.

38. Neither the mere cashing of checks nor the mere exchanging of currency is evidence of income of the person so cashing or exchanging. Proof of such transactions is evidence merely that the person so cashing said checks or exchanging said currency was engaged in some capacity in transactions involving the amounts of such checks or currency and is a circumstance which may be taken into consideration in determining such person's income.

39. Transactions involving the cashing of checks and the exchanging of currency by the defendant Sommers cannot be considered by you in determining the income of the defendant Johnson in any year unless the evidence received convinces you beyond a reasonable doubt that defendant Johnson was the owner of or had an interest in

said checks or currency. The same is true with respect to the checks cashed or currency exchanged by defendants Creighton, Flanagan, Kelly, Wait and Hartigan. If 1449 upon consideration of all the evidence you have a reasonable doubt that defendant Johnson had an interest in the checks cashed and currency exchanged by the several defendants, then you will give no consideration to such transactions and to the amounts involved therein.

41. Defendants Andrew J. Creighton, Jack Sommers, Edward Wait, James A. Hartigan, John M. Flanagan, William P. Kelly, Reginald E. Mackay and Stuart Solomon Brown are each charged in the first four counts of the indictment with knowingly aiding the defendant William R. Johnson in wilfully attempting to evade the tax imposed by law upon the defendant William R. Johnson on account of his taxable income for the years 1936, 1937, 1938 and 1939, respectively. In considering the charge against such defendants under said counts the case of each defendant must be considered separately as to each count and the burden is on the prosecution as to each such defendant as to each count to show by evidence beyond a reasonable doubt that he knowingly aided in the commission of the particular offense charged. Before any such defendant can be found guilty of so aiding defendant Johnson in any year alleged, the prosecution must prove beyond a reasonable doubt that defendant Johnson did in such year have a taxable income in excess of the amount returned by him for said year and that said defendant Johnson did wilfully attempt to evade payment of the tax imposed by law for said year and that such defendant did knowingly aid or abet said Johnson in such wilful attempt. If the prosecution fails to prove any one of these elements to your satisfaction beyond a reasonable doubt as to any defendant, then you must find such defendant not guilty.

44. In considering Count Five of the indictment you are instructed that a conspiracy does not consist both of the conspiracy and the acts done to effect the object thereof, but of the agreeing and acting together alone. The provision of the statute that there must be an act done to effect the object of the conspiracy before 1450 there can be a conviction under the statute is merely a safeguard requiring a particular degree of proof. Such acts, called overt acts, are not, however, elements of the conspiracy itself and proof of overt acts alone would

not warrant a conviction for conspiracy. The prosecution is required to prove beyond a reasonable doubt not only that an overt act was done, but must also prove beyond a reasonable doubt that the actual unlawful agreement or conspiracy charged existed prior to and at the time of the doing of such act. And so in this case if you find that the prosecution has proved an overt act, but has failed to prove beyond a reasonable doubt the prior unlawful agreement or conspiracy, it will be your duty to bring in a verdict of not guilty as to the fifth count.

46. The mere knowledge of a defendant that others were in a conspiracy to violate the law and even his full sympathy with the object of that conspiracy, without more, would not constitute him a conspirator. There must be proof beyond a reasonable doubt of his active participation in the conspiracy charged.

47. The mere fact that each of the defendants knew all other defendants during the period of time here in question and that they came in contact with each other is not sufficient to support a charge of conspiracy. Several men may be engaged in doing various acts, even of the same general character and in similar fields of activity, by which they may come into contact with each other without becoming conspirators.

49. The existence of a conspiracy cannot be established against an alleged conspirator by evidence of acts or declarations by an alleged co-conspirator done or made in his absence.

50. Before the acts or declarations of an alleged conspirator can be received in evidence against another charged with being a party to a conspiracy, it must be shown by independent evidence that the conspiracy existed at the time the acts were done or the declarations were made and that the accused was then a party to the conspiracy.

51. To be admissible against an accused, the act or declaration of an alleged co-conspirator must itself be an act in furtherance of the common object proved by independent evidence to have been agreed upon.

55. The statement of the defendant Johnson which was made by him on March 27, 1939, is hearsay as to the other defendants and is to be considered by you only in considering the charge against him. No other defendant is bound by such statement made out of the presence of such other defendant and you must dismiss it from your

minds in considering your verdict as to each of the other defendants.

56. The report of the testimony of defendant Brown before the grand jury which returned the indictment in this case was received as to the defendant Brown only. It must not be considered by you as evidence against any other defendant. Any reference made in such testimony to any other defendant must be dismissed from your minds in considering your verdict as to such other defendant. No other defendant is bound by statements of defendant Brown made in his testimony before the grand jury.

57. If you believe from the evidence that defendant Brown referred to the Reserve for Uncollected Funds account on the books of the Lawrence Avenue Currency Exchange, in conversation with the witness Bag-haw, as the Johnson account, you may consider such statement only as to defendant Brown. It is hearsay as to the other defendants and you must dismiss it from your minds in considering your verdict as to the other defendants. Such statement of the defendant Brown, if you believe he made it, must not be considered by you as proof that defendant Johnson had any interest in or connection with such account.

1452 58. Mere narration by an alleged conspirator to a witness respecting acts of or transactions with one accused of being a party to the conspiracy is not admissible against the accused for the reason that it is not an act or declaration in furtherance of the alleged conspiracy.

59. The income tax returns of defendant Sommers for the years 1932, 1933, 1934 and 1935, and all testimony with respect to the contents thereof are to be considered by you only in considering the charge against said defendant. This evidence is not binding on any other defendant and you must dismiss it from your minds in considering your verdict as to each of the other defendants.

60. The income tax returns of defendant Sommers for the years 1936, 1937, 1938 and 1939, and all testimony with respect to the contents thereof are to be considered by you only in considering the charge against said defendant. This evidence is not binding on any other defendant and you must dismiss it from your minds in considering your verdict as to each of the other defendants.

Refused requests numbered 61 to 72 inclusive referred to the income tax returns of defendants Kelly, Mackay,

Flanagan, Hartigan, Creighton and Wait, respectively, and were in substance identical with refused requests 59 and 60 referring to the income tax returns of defendant Sommers.

73. If you find from the evidence that defendant Creighton had a conversation with witness Goldstein in the office of witness Goldstein relative to payment of rent on the property at 9730 South Western Avenue, as witness Goldstein testified, then you will consider such testimony only as to defendant Creighton. Such statement, if you find it was made, was made outside the presence of the other defendants and is hearsay as to them. In considering this case as to each of the other defendants, you must dismiss from your mind all consideration of this conversation, if you find it occurred.

1453 75. The appearance on the customer account records of the Illinois Nation-Wide News Service, being Government Exhibits O-11 to O-15 inclusive, of the name "Johnson" or "Bill Johnson" is not to be considered by you as evidence of any connection of the defendant Johnson with such accounts. Such entries are hearsay as to the defendant Johnson and are to be dismissed from your consideration in arriving at your verdict as to defendant Johnson as to each count of the indictment.

76. In the absence of evidence on the subject, the law presumes that a defendant in a criminal case has a good reputation and he is entitled to the benefit of this presumption in your consideration of the evidence.

77. The evidence of the good reputation of the defendant, William R. Johnson, for truth, honesty and fair dealing, should be considered by you in connection with all the other evidence in the case. Such evidence of good character may be sufficient to raise a reasonable doubt in your minds as to the guilt of said defendant.

78. You should exercise the utmost caution and care not to convict innocent men. The rules as to the presumption of innocence, the burden of proof, the requirement of proof beyond a reasonable doubt, and the duty of the jury to reconcile the evidence with the innocence of the accused, if it can fairly and reasonably do so, are all safeguards that the law throws about an accused on trial charged with a crime, and you should give to each of these defendants, considered separately, the benefit of every such safeguard thus intended to secure him against unjust conviction.

1454 And thereupon the jury having returned a verdict of guilty as to defendants William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown, each of said defendants made a motion for a new trial and said several motions having been argued, and the Court having denied said motions, each of said defendants excepted.

And thereupon each of said defendants moved that judgment be arrested as to each defendant under each count of the indictment, and that said defendants be discharged, and the Court having denied said several motions in arrest of judgment, the several defendants excepted.

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S-12—	Money order stub Lawrence Avenue Currency Exchange, to Entry Service, re Horseshoe.	
S-13—	Paid invoice of Entry Service re Horseshoe.	

Numbers.	Description.	Page.
S-14 and S-15—	Paid invoices of Don & Company re Horseshoe.	
S-16A and S-16B—	Paid invoices of O'Neil & Company re Horseshoe.	
S-17A and S-17B—	Paid invoices of Dixie Coal Company, with money order stub attached.	
S-18 and S-19—	Rent receipts re Horseshoe parking lots.	
S-20—	Paid invoice Novak & Company.	
S-21—	Money order stub from Deemar Currency Exchange.	
S-22—	Money order stub from Kedzie "L" Currency Exchange.	
1461 S-23—	Money order stub with telephone bill attached.	
S-24—	Electric bill with money order stub attached.	
S-25—	Money order stub of Lawrence Avenue Currency Exchange to Peoples Gas, with gas bill attached.	
S-26—	Money order stub of Lawrence Avenue Currency Exchange, together with invoice Commonwealth Edison attached.	
S-27—	Lamp purchase contract of Horse-Shoe with Commonwealth Edison.	
S-28A—	Chart showing dates of operation of Horse-Shoe and Dev-Lin clubs.	
S-29A and S-29B—	Records of Wendt & Crone re air-conditioning at Horseshoe Restaurant.	
S-30—	Check of Albert C. Bissell dated 9/15/37 representing loan by Sommers of \$450. showing endorsements of \$125 paid thereon.	
S-31A to S-31D—	Documents used in connection with making Sommers' 1939 income tax return.	
S-36—	Envelope containing pair of Horse-Shoe dice.	
K—	Chart showing dates of operation of D & D Club.	

INDEX OF DEFENDANTS' EXHIBITS REFUSED.

Numbers.	Description.	Page.
S-33—	Copy of indictment returned against Sommers charging him with income from gambling clubs operated by him.	
K-4—	Copy of indictment returned against Kelly charging him with income from gambling club operated by him.	

Entered
Jan. 9,
1941. 1462 And afterwards, to wit, on the 9th day of January
A. D. 1941, being one of the days of the regular
December term of said Court, in the record of proceedings
thereof, in said entitled cause, before the Honorable John
P. Barnes District Judge appears the following entry,
to wit:

1463 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois.

Eastern Division.

Thursday January 9, A. D. 1941.

Present Honorable John P. Barnes, Judge.

United States of America	} No. 32168.
<i>vs.</i>	
William R. Johnson, <i>et al.</i>	

This day come the defendants by their attorneys and enter a motion to settle and sign their Bill of Exceptions which motion is continued to Jan. 13, 1941.

1464 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

Tuesday January 21. A. D. 1941

Present Honorable John P. Barnes, Judge.

United States of America }
vs. } No. 32168.
William R. Johnson, *et al.* }

This day come the defendants by their attorneys and present their bill of exceptions in two volumes which bill of exceptions is settled, allowed and authenticated, signed and made a part of the record of this cause and said bill of exceptions, assignment of errors and exhibits are certified to the Circuit Court of Appeals.

1465

No. 7500-1.

Entered
Jan. 21.
1941

Appeal to

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit of the United States.

United States of America } Appeal from District Court
Appellee. } of United States, Northern
District of Illinois, Eastern
vs. } Division.
William R. Johnson, *et al.* }
Appellants. } No. 32168.

ASSIGNMENTS OF ERROR

Defendants William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and

Stuart Solomon Brown, having appealed from the judgment of the United States District Court for the Northern District of Illinois to the United States Circuit Court of Appeals for the Seventh Judicial Circuit, and believing that in the record of the proceedings there is manifest error, each severally makes the following assignments of error which he alleges were committed during the trial:

1. The Court erred in not sustaining defendant Johnson's motion to quash the indictment, and each count thereof. Tr. 45.

2. The Court erred in sustaining the motion to strike the plea in abatement of defendants Sommers, Hartigan, Flanagan, Kelly and Brown. Tr. 46.

3. The Court erred in overruling the demurrers of the several defendants to the indictment and each count thereof. Tr. 45-46.

1466 4. The Court erred in sustaining the motion to strike the plea of the Statute of Limitations as to Count One of the indictment of defendants Sommers, Hartigan, Flanagan, Kelly and others. Tr. 46.

5. The Court erred in overruling exceptions to the defendants to the bill of particulars. Tr. 140.

6. The Court erred in denying the motion of defendant Johnson for a more specific bill of particulars. Tr. 140.

7. The Court erred in denying the motion of defendants to require the United States to answer the special pleas of defendants challenging the legal existence of the grand jury at the time of the return of this indictment. Tr. 45.

8. There is no substantial competent evidence in the record that defendant Johnson wilfully attempted to evade income taxes for the year 1936, as charged in the first count of the indictment.

9. There is no substantial competent evidence in the record that defendant Johnson wilfully attempted to evade income taxes for the year 1937, as charged in the second count of the indictment.

10. There is no substantial competent evidence in the record that defendant Johnson wilfully attempted to evade income taxes for the year 1938, as charged in the third count of the indictment.

11. There is no substantial competent evidence in the record that defendant Johnson wilfully attempted to evade income taxes for the year 1939, as charged in the fourth count of the indictment.

1467 12. There is no substantial competent evidence in the record that defendants Sommers, Hartigan, Flanagan, Kelly and Brown, or any of them, knowingly aided defendant Johnson in wilfully attempting to evade the payment of income taxes for the years 1936, 1937, 1938 and 1939, or for any of such years.

13. The Court erred in receiving in evidence acts done and declarations made by co-defendants outside the presence of defendant Johnson against defendant Johnson as to the first four counts of the indictment.

14. The Court erred in not limiting the evidence of acts done and declarations made by co-defendants outside the presence of defendant Johnson to the fifth count of the indictment as such evidence was received against defendant Johnson.

15. The prejudicial effect of receiving in evidence acts done and declarations made by co-defendants outside the presence of defendant Johnson against defendant Johnson, as to the first four counts of the indictment, could not be and was not prevented by the brief reference to the subject in the Court's charge, to-wit: "Under the first four counts of the indictment, the declarations, statements and conversations of one or more defendants, made out of the presence of the other defendants, are not binding upon any other defendant, and must not be considered by you against any other defendant or defendants." R. 1007.

16. As to the first four counts of the indictment the Court erred in receiving in evidence the following transactions and conversations with and acts done and declarations made by certain defendants outside the presence of other defendants:

(a)--As to all other defendants the conversation between witness Schumacker and defendant Johnson in 1930 relative to termination of Schumacker's employment at the K. and K. Club and the discharge of Schumacker 1468 by Johnson. R. 177.

(b) As to all other defendants the conversation in 1932 between witness Brantman and defendant Johnson relative to the drive being made by the Government for returns from persons with gains from illegal business, (R. 421), and the later conversation between witness Brantman and defendants Johnson and Sommers relative to the same subject (R. 421-422), and Johnson's statement that his name was not to appear on any such returns as the employer. R. 423.

(c) As to all other defendants the conversation in 1934 between witness Brantman and Revenue Agents and defendant Johnson relative to Johnson's not keeping bank accounts and Johnson's statement that he did not want to build up evidence against himself. R. 433.

(d) As to all other defendants the interview between Agent Wilson and defendant Johnson in 1934 respecting Johnson's 1931 income tax return and Johnson's statement to Agent Wilson that he had in cash only \$78,000 at the end of 1931. R. 10.

(e) As to all other defendants the conversation in 1936 between witness Brantman and defendant Johnson relative to Johnson's transfer of his accounting work from Brantman to Radomski. R. 433.

(f) As to all other defendants the conversations in 1936 between witnesses Russell and Glenn Glave and defendant Johnson relative to the Glave claims to Harlem Stables and the settlement of said claims by Johnson. R. 285, 286, 287, 291, 292.

(g) As to the other defendants the conversations in 1936 between witnesses Wadzinski and Kolarik and defendants Johnson and Sommers relative to settlement of claims of the witnesses for wages due from the Glaves and the adjustment of said claims by Johnson. R. 472, 474, 475.

1469 (h) As to all other defendants the conversation in 1935 between witness Atlas and defendant Johnson relative to the installing of a set of books at Lincoln Tavern and the later reports to defendant Wait. R. 305.

(i) As to the other defendants the conversation in 1935 between witness Kehoe and defendants Johnson and Sommers relative to the employment of Kehoe and the assignment of Kehoe by Johnson to work at the Kedzie and Leland bus station. R. 309.

(j) As to the other defendants the conversation in 1938 between witness Kehoe and defendants Johnson and Hartigan relative to the employment of Kehoe and the direction by Johnson to Flanagan to give Kehoe \$10 a week. R. 319.

(k) As to all other defendants the conversation about 1938 between witness Pollack and defendant Johnson relative to a crooked dice dispute at the Dev-Lin and the offer of Johnson to pay Pollack's loss. R. 379, 380.

(l) As to all these defendants the conversation between witness McGlynn and defendant Creighton relative to the

termination of McGlynn's employment and the statement by Creighton that he was "only working" there. R. 193.

(m) As to all these defendants the conversations in 1938 and 1939 between witness Snoddy and defendant Creighton relative to arrangements for cashing checks and for other currency exchange service. R. 511, 512.

(n) As to all other defendants the conversation in 1934 between witness Edman and defendant Sommers relative to cashing checks and other banking service and the explanation of Sommers for not depositing the checks in his bank account. R. 503, 504, 505.

1470 (o) As to defendants Johnson, Flanagan and Brown the conversations in 1936 between witness Marcus and defendant Sommers relative to arrangements for cashing checks and other currency exchange service, (R. 476, 477) and the transactions of Sommers and Maurice Downey with the exchange. R. 477-488, 496-499.

(p) As to all other defendants the conversation in 1937 between witness Bissell and defendant Sommers relative to the loan made by Sommers to Bissell and the statement by Sommers to Bissell that he had to get the approval of the boss to make the loan and that Bill Johnson was the boss. R. 545, 546.

(q) As to all other defendants the conversations in 1936 between witnesses Russell and Glenn Glave and defendant Sommers relative to the Glave claims to Harlem Stables. R. 284, 285, 291.

(r) As to all other defendants the conversations in 1939 between witness Van Spankeren and defendant Sommers relative to an action for gambling losses and the settlement of the claim by Sommers. R. 402, 403.

(s) As to all other defendants the statements of defendant Sommers to the witness Rebman in 1938 that she would have to consult defendant Johnson with respect to raising the limit on the Red and Black game at the Horse-Shoe, (R. 566, 567) and his statement that Johnson settled all controversies arising at the Horse-Shoe. R. 567, 568.

(t) As to all other defendants the statement of defendant Sommers to witness Marcus that he was discontinuing his business with the Albany Park Currency Exchange because a new exchange was being open in "our" building around the corner. R. 477.

(u) As to all other defendants the conversation between witness Hayes and defendant Flanagan, in 1933

relative to the transfer of Hayes from the 4020 Club to the Horse-Shoe Club. R. 295.

1471 (v) As to all other defendants the conversation in 1934 between witness Hayes and defendant Hartigan relative to hot dice and the statement that this game occurred before Hartigan was "working for" Johnson. R. 300-303.

(w) As to all other defendants the conversations in 1938 and 1939 between witness Bagshaw and defendant Brown relating to the opening of a set of books for the Lawrence Avenue Currency Exchange (R. 532) and to the accounts in said books and to the audits of said accounts and to the closing of the exchange. R. 532-539.

(x) As to all these defendants the conversation in 1935 between witness Updyke and witness Brantman relative to the 1934 return of defendant Kelly, Government's Exhibit R-14. R. 706, 707.

(y) As to all these defendants the cashing of checks and the exchanging of currency and other transactions between defendant Creighton and the Mid-City Bank (R. 515-517, 715-721), the Lawrence Avenue Currency Exchange and the Washington Park Currency Exchange R. 621, 510-512.

(z) As to all other defendants the cashing of checks and the exchanging of currency and all other transactions between defendant Flanagan and the Lawndale Currency Exchange. R. 552-554.

(aa) As to all other defendants the cashing of checks and the exchanging of currency and other transactions between defendant Sommers and The Northern Trust Company (R. 503-508, 604, 605), and as to defendants Johnson and Flanagan the cashing of checks and the exchanging of currency and other transactions between defendant Sommers and the Albany Park Currency Exchange (R. 476-488, 496-499) and the Lawrence Avenue Currency Exchange. R. 618, 621.

1472 (bb) As to all other defendants the request for and receipt of \$100 bills by defendant Sommers in connection with the cashing of checks and the exchanging of currency. R. 477-479.

(cc) As to other defendants respectively the request for and receipt of \$100 bills by a co-defendant in connection with the cashing of checks and the exchanging of currency. R. 553, 554, 512, 606.

(dd) As to defendants Johnson, Flanagan, Kelly and

Brown the activities of defendant Sommers at Lincoln Tavern (R. 133, 309, 310, 316) and Harlem Stables. R. 317, 322, 346, 352.

(ee) As to defendants Johnson, Flanagan, Kelly and Brown the activities of defendant Hartigan at the Horse-Shoe (R. 133, 309, 316, 319, 326, 348, 387) and the Dev-Lin. R. 310, 322, 387, 262.

(ff) As to defendants Johnson, Sommers and Brown the activities of defendants Creighton, Hartigan and Kelly at the 4020 Club. R. 294.

(gg) As to all other defendants the expenditures of defendant Johnson as related by witnesses Anderson (R. 92), Alguire (R. 259), Becker (R. 574), Bibow (R. 576), Boras (R. 231), Bulger (R. 328), Cervenka (R. 228), Davis (R. 142), DeBittencourt (R. 232), Fisher (R. 144), Goldberg (R. 140), Goldstein (R. 55-62), Grushkin (R. 40), Hardin (R. 308), Huffman (R. 259), Huston (R. 260), Kerr (R. 143), Kling (R. 230), Kilpatrick (R. 34), Leichsenring (R. 261), Nadherny (R. 78, 81, 84), Nechin (R. 313), Paulsen (R. 145), Reedy (R. 170), Shaw (R. 49-51), Star (R. 168), Schafer (R. 274), Shelly (R. 69), Tavalin (R. 12, 13, 15), Wheeler (R. 45, 392, 393), Woltz (R. 36), and Yaseen. R. 90.

17. The Court erred in receiving in evidence against defendant Johnson as to the first four counts the income tax returns of the alleged aiders and abettors (Gov. Ex. R. 14-19, R. 24-28, R. 35-42, R. 44-49, R. 52-57, R. 108, R. 58-64, R. 81-85) and the declarations, acts and omissions of such alleged aiders and abettors in connection with the 1473 preparation, filing and auditing of their several income tax returns. R. 421-429, 94-96, 767-772, 706, 707, 710, 711, 714, 715, 464, 465, 470.

18. As to the first four counts the Court erred in receiving in evidence against other defendants respectively the income tax returns of co-defendants, to-wit:

(a) As to all these defendants the income tax returns of defendant Johnson for the years 1932 to 1935 inclusive, Government's Exhibits R-6 to R-9.

(b) As to defendants Sommers, Flanagan, Hartigan, Kelly and Brown, the income tax returns of defendant Johnson (Government's Exhibits R-6 to R-13) and the declarations, acts and omissions of defendant Johnson in connection with the preparation, filing and auditing of his several income tax returns (R. 419, 421, 429, 430, 93, 94, 412, 413), and the tax assessment lists relating thereto, Government's Exhibits R-86 to R-106.

(c) As to defendants Johnson, Hartigan, Flanagan, Kelly and Brown, the income tax returns of defendant Sommers (Government's Exhibits R-35 to R-42) and the declarations, acts and omissions of defendant Sommers in connection with the preparation, filing and auditing of his several income tax returns. R. 421-423, 96, 470.

(d) As to defendants Johnson, Sommers, Hartigan, Kelly and Brown, the income tax returns of defendant Flanagan (Government's Exhibits R-44 to R-49) and the declarations, acts and omissions of defendant Flanagan in connection with the preparation, filing and auditing of his several income tax returns. R. 425, 426, 428, 94, 95, 711.

(e) As to defendants Johnson, Sommers, Hartigan, Flanagan and Brown, the income tax returns of defendant Kelly (Government's Exhibits R-14 to R-19) and the declarations, acts and omissions of defendant Kelly in connection with the preparation, filing and auditing of his several income tax returns. R. 423, 424, 96, 767, 768, 706, 707.

1474 (f) As to defendants Johnson, Sommers, Flanagan, Kelly and Brown, the income tax returns of defendant Hartigan (Government's Exhibits R-52 to R-57) and the declarations, acts and omissions of defendant Hartigan in connection with the preparation, filing and auditing of his several income tax returns. R. 424, 425, 95, 710, 711, 464, 465.

(g) As to all these defendants the income tax returns of defendants Wait (Government's Exhibits R-81 to R-85), Creighton (Government's Exhibits R-58 to R-64), Mackay (Government's Exhibits R-24 to R-28), and the declarations, acts and omissions of defendants Wait, Creighton and Mackay in connection with the preparation, filing and auditing of their several income tax returns.

19. The Court erred in refusing to give to the jury requested Instruction 59,—“The income tax returns of defendant Sommers for the years 1932, 1933, 1934 and 1935, and all testimony with respect to the contents thereof, are to be considered by you only in considering the charges against said defendant. This evidence is not binding on any other defendant and you must dismiss it from your minds in considering your verdict as to each of the other defendants.” R. 1031.

20. The Court erred in refusing to give to the jury Instruction 60,—“The income tax returns of defendant Sommers for the years 1936, 1937, 1938 and 1939, and all testi-

mony with respect to the contents thereof, are to be considered by you only in considering the charges against said defendant. This evidence is not binding on any other defendant and you must dismiss it from your minds in considering your verdict as to each of the other defendants." R. 1031.

21. The Court erred in refusing to give to the jury requested Instructions 61 and 62 relating to the returns of defendant Kelly, 65 and 66 relating to the returns of defendant Flanagan, 67 and 68 relating to the returns of defendant Hartigan, 63 and 64 relating to the returns of defendant Mackay, 69 and 70 relating to the returns of 1475 defendant Creighton, and 71 and 72 relating to the returns of defendant Wait, which were respectively the same in substance as requested Instructions 59 and 60 relating to the returns of defendant Sommers. R. 1031, 1032.

22. The Court erred in receiving in evidence, in violation of Section 19 of Chapter 110½ of Illinois Statutes, the confidential communications of these defendants made to Brantman, a public accountant, in connection with the preparation of their income tax returns. R. 425, 427, 428.

23. The Court erred in receiving in evidence against defendant Johnson, under the first four counts, the acts and declarations of the several co-defendants outside the presence of defendant Johnson in connection with the exchange of currency and cashing of checks by such co-defendants, in the absence of any competent evidence under the first four counts showing that defendant Johnson had any interest in said currency or said checks or that he received any of said currency or proceeds of said checks. (R. Same as cited under assignment 16Y to 16 CC.)

24. The Court erred in receiving in evidence against defendant Johnson, under the first four counts, the acts and declarations of the several co-defendants outside the presence of defendant Johnson in connection with the operation of their respective gambling houses and respecting the destruction of records of transactions in said gambling houses. R. 767, 768, 374, 824-827, 873-874, 886, 901, 941, 355, 298, 174, 342.

25. The Court erred in receiving in evidence, against all these defendants, as to the first four counts, the testimony of witness O'Neil relative to sales and delivery of gamblers' supplies to John Morgan at 3971 Milwaukee Avenue, in the

absence of proof connecting any of these defendants with said transactions. R. 729-732.

1476 26. There is no substantial competent evidence in the record that any of these defendants conspired and confederated with any other defendant or any other person to commit offenses against the United States, as charged in the fifth count of the indictment.

27. The Court erred in receiving in evidence, under the fifth count, the acts done and the declarations made by co-defendants and other alleged conspirators, out of the presence of the particular defendant against whom such evidence was received, which are detailed under assignment 16, in the absence of proof by independent evidence of the existence of a conspiracy in which such defendant was a participant at the time said acts were done or said declarations were made.

28. The Court erred in receiving in evidence against these defendants, or some of them, declarations and acts of alleged co-conspirators made or done outside the presence of such defendants which were not in furtherance of the alleged common object, to-wit:

(a) Conversation between witness Schumacker and defendant Johnson in 1930 relative to termination of Schumacker's employment at the K. and K. Club and the discharge of Schumacker by Johnson. R. 177.

(b) Interview between defendant Johnson and government agents in 1932 relative to Johnson's 1929 return and his statements about his interest in gambling houses. R. 996-8.

(c) Conversation between witness Lenz and defendant Johnson in 1935 relative to Flanagan's rate for racing news service. R. 151, 152.

(d) Statement of defendant Johnson in Nationwide office in 1938 that consideration should be given to the fact that he had side games in his gambling houses in fixing rate for service to his horse book. R. 157.

1477 (e) Conversations between witness Wendt and defendant Sommers in 1938 relative to air-conditioning contract at Bon-Air and deduction by Sommers of \$700 from collection for job to cover Wendt debt. R. 121, 123.

(f) Conversation between witness Van Spankeren and defendant Sommers relative to action for gambling losses and settlement of claim by Sommers. R. 402, 403.

(g) Failure of defendant Brown to keep his appointment with agent Clifford in November, 1939. R. 739.

(h) Purchases and improvement of various properties by defendant Johnson. R. 59, 60, 11, 12, 13, 40, 239.

(i) Conversations in 1936 between defendant Johnson and the Graves relative to their claims to stock and furnishings at Harlem Stables and the settlement of their claim by Johnson. R. 285-287, 291, 292.

29. The Court erred in receiving in evidence, against these defendants, or some of them, statements of alleged co-conspirators made outside the presence of such defendants, which were mere narration and not acts in furtherance of the alleged common object, to-wit:

(a) The interview between Agents Sommers and Clifford and defendants Wait and Johnson November 3, 1939, and the statements of Johnson that he owned 9730 Western and Bon-Air Country Club. R. 737, 118.

(b) The telephone interview between Agent Clifford and one Brown November 1, 1939, and the statement of said Brown that he had destroyed the records of the Lawrence Avenue Currency Exchange. R. 739.

(c) The interviews between Agent Ruggaber and defendant Wait in 1940, and the statement of Wait that he did not receive all of the proceeds of Laemmle's checks and could not state who did. R. 768-772.

1478 (d) The statement of defendant Johnson to Government Agents March 27, 1939. Government's Exhibit O-207. R. 410-418.

(e) The statement of defendant Sommers to Government Agents December 29, 1939. Government's Exhibit O-210. R. 467-471.

(f) The statement of defendant Kelly to Government Agents January 3, 1940. Government's Exhibit O-208. R. 458-460.

(g) The statement of defendant Hartigan to Government Agents December 28, 1939. Government's Exhibit O-209. R. 462-467.

(h) The statement of defendant Brown to the Grand Jury January 10, 1940. Government's Exhibit O-211. R. 614-692, 531.

(i) The statements of defendant Brown to witness Bagshaw relative to the accounts of the Lawrence Avenue Currency Exchange. R. 532-539.

30. The Court erred in receiving in evidence against these defendants respectively books of Nationwide News Service, Inc. relating to transactions of particular defendants but containing prejudicial entries and notations re-

garding other defendants which were no part of the records of transactions with such other defendants, to-wit:

(a) Government's Exhibit O-11, showing several hundred customers' accounts for 1934 not in any way identified with defendant Johnson, includes accounts labeled, "W. Johnson, 1613 E. 53rd St." and "W. Johnson, #2, 162 N. State St."; and, though not identified with defendant Hartigan, includes the account, "J. Flanagan, 2141 S. Crawford Ave." on which is typed "Also pays for Hartigan" and the account, "Hartigan, 7506 Saginaw Ave." on which is written in red ink, "Cr. given Flan." R. 167.

1479 (b) Government's Exhibit O-12, showing several hundred customers' accounts for 1935 not in any way identified with defendant Johnson, includes accounts labeled, "W. Johnson 5306 Cornell" and "W. Johnson #2 162 N. State St.", and also includes an account labeled "Lincoln Tavern" on which is written in ink "to Bill Johnson's Book", and an account labeled "Meade, 6825 Milwaukee Ave." on which is written in ink "to Bill Johnson's Book". R. 167.

(c) Government's Exhibit O-13, showing several hundred customers' accounts for 1936 not in any way identified with defendant Johnson, includes an account labeled "W. Johnson 1641 E 53rd St.", and another, "Flanagan (Bill Johnson) 2141 S Crawford Ave.", and, though not identified with defendant Kelly, includes an account labeled "W. Kelly 1019 E. 43rd". R. 167.

(d) Government's Exhibit O-14, showing several hundred customers' accounts for 1937 not in any way identified with defendant Johnson, includes an account labeled "W. Johnson 1641 E 53rd", and another, "Flanagan (Bill Johnson) 2141 S Crawford Ave.", and, though not identified with defendant Kelly, includes an account labeled "W. Kelly 1023 E 43rd St" R. 167.

(e) Government's Exhibit O-15, showing several hundred customers' accounts for 1938 not in any way identified with defendant Johnson, includes an account labeled "Flanagan (Johnson) 4715 Irv Pk". R. 167.

31. The Court erred in receiving in evidence details of the operation of gambling houses and losses of patrons of such gambling houses and other similar matter which was prejudicial to these defendants and confusing to the jury, to-wit:

(a) The experiences of witness Blake in being frisked as he entered the Southland Club (R. 216), his detailed

description of the arrangement of the club (R. 217), 1480 his conversation with defendant Creighton opposing the opening of the Club Western (R. 217, 218), the relation of his experiences as a gambler (R. 218), and the checks representing gambling transactions. Government's Exhibits X-1 to X-138. R. 219.

(b) The testimony of witness Bissell respecting his losses in gambling houses (R. 545, 546) and the checks respecting gambling transactions. Government's Exhibits X-200 to X-207. R. 547, 551.

(c) The testimony of witness Van Spankeren respecting his losses in gambling houses and the settlement made with him by defendant Sommers. R. 401-403.

(d) The testimony of witness Kauders respecting his losses in gambling houses. R. 405, 406.

(e) The testimony of witnesses Anderson (R. 130), Cobb (R. 355) and Cregar (R. 136) as to the details of their duties as shills; the testimony of witnesses Cusack (R. 248, 249), Lynch (R. 281, 282) and Ogren (R. 330, 331) as to their duties as cashiers; the testimony of witnesses Ellis (R. 280), Hayes (R. 298, 299) and Schumacker (R. 178) as to the details of their duties as sheet-writers; and the testimony of witnesses Baker (R. 132-134), Cobb (R. 349, 350, 352, 355), Corbin (R. 389, 390), Didier (R. 225), Hayes (R. 299, 300), O'Leary (R. 342, 343), Schumacker (R. 174-176, 178-182), and scores of others, as to the details of gambling house operations.

(f) The testimony of witnesses Anderson (R. 128, 129, 131), Schmidt (R. 336-7) and Schultz (R. 235-240) as to the details of construction work done at various gambling houses.

(g) The cross-examination by the Court of witnesses Rebman (R. 573) and Pfingsten (R. 853) and defendant Sommers (R. 845-847) as to immaterial matters relating to gambling.

1481 32. The Court erred in receiving in evidence under the fifth count, against the other defendants, declarations made and acts done by a co-defendant outside the presence of said defendants respectively in connection with the exchange of currency and cashing of checks without proof of the connection of such other defendants with said transactions or any interest of such other defendants in such currency or proceeds of checks. (R. Same as 16Y to 16CC.)

33. The Court erred in receiving in evidence under the

fifth count, against the other defendants, declarations made and acts done by a co-defendant outside the presence of such defendants respectively in connection with the operation of their respective gambling houses and respecting the destruction of records of transactions in said gambling houses. (R. Same as assignment 24.)

34. The Court erred in receiving the testimony of Glenn Glave and Russell Glave that they were the owners of Harlem Stables in August 1936 and that they had in said premises furniture, liquors and other property of a value of \$3,500 (R. 286, 287, 290), and that defendants Johnson and Sommers took possession of Harlem Stables without the owners' consent and without paying for the property (R. 284, 285, 291), thereby prejudicing all defendants by this proof of gangster methods shown by other proof to be wholly false. R. 804, 805-807, 813, 953.

35. The Court erred in failing to instruct the jury that neither the cashing of checks nor the exchanging of currency by some of co-defendants was evidence of the income of defendant Johnson without proof that defendant Johnson was the owner of or had an interest in said checks or currency. (Requested Instructions 38, 39, R. 1028.)

36. The Court erred in refusing to give to the jury requested Instruction 38 (R. 1028), requested Instruction 39 (R. 1028), requested Instruction 49 (R. 1030), requested Instruction 50 (R. 1030), requested Instruction 51 (R. 1031), requested Instruction 55 (R. 1030), requested Instruction 56 (R. 1031), requested Instruction 57 (R. 1031), requested Instruction 58 (R. 1031), requested Instruction 73 (R. 1032), and requested Instruction 75 (R. 1032).

37. The instruction given by the Court, to-wit: "The statement of the defendant Brown to the witness Clifford that he, Brown, destroyed the records of the Lawrence Avenue Currency Exchange, if it was made, is admissible only against the defendant Brown". (R. 1007) did not point out to the jury that such statement was hearsay as to the other defendants and was not to be considered by the jury in considering the charges against the other defendants, and the prejudicial effect of receiving this testimony was not cured by said instruction.

38. The Court erred in overruling the objection of defendants to the testimony of witness Bagshaw to the effect that defendant Brown referred to the Reserve for Uncollected Funds account on the books of the Lawrence Avenue Currency Exchange as the Johnson account. R. 536.

39. The Court erred in sending to the jury room a great mass of documents received in evidence which contained statements and entries having no bearing on the issues in this case and which were not connected with these defendants respectively by any competent evidence, to-wit:

(a) Government's Exhibits E-15 to E-20, being carbon copies of monthly statements from General Mortgage Investments to defendant Johnson relating to Lincoln Park Building transactions, in no way connected with defendants Sommers, Flanagan, Hartigan and Brown. R. 29, 30.

(b) Same as Government's Exhibits E-22 to E-26, relating to Thorndale-Glenwood Apartments transactions. R. 30, 31.

(c) Government's Exhibit E-9 (five sheets), being ledger accounts of General Mortgage Investments showing transactions with syndicate members, including defendant Johnson but not including any other defendant, respecting Lincoln Park Building. R. 29, 32.

1483 (d) Government's Exhibit E-12, being ledger account of First Management Corporation showing transactions with syndicate members, including defendant Johnson but not including any other defendant, respecting the Lincoln Park Building. R. 36.

(e) Government's Exhibit E-14, being an air-conditioning contract with defendant Johnson and in no way connected with defendants Sommers, Flanagan, Hartigan and Brown. R. 45.

(f) Government's Exhibits E-46 to E-53, being the Bon-Air Catering Company books in no way connected with defendants Sommers, Flanagan, Kelly and Brown and hearsay as to all these defendants. R. 52, 53.

(g) Government's Exhibits E-54 to E-66, being auditors' reports and working papers relating to Bon-Air Catering Company audits and in no way connected with defendants Sommers, Flanagan, Kelly and Brown and hearsay as to all these defendants. R. 53, 612, 613.

(h) Government's Exhibits E-27 to E-39, being Chicago Title & Trust Company escrow files in no way connected with any defendant except Johnson. R. 69-72, 521-523.

(i) Government's Exhibits E-71, E-72, E-77, E-78, E-81 to E-95, E-97 to E-100, E-102 and X-208-A to F, being receipted bills for materials and labor for Bon-Air Country Club, which are a duplication of the testimony of witnesses and in no way connected with any defendant except

Johnson. R. 91, 93, 144, 232, 259, 148, 127, 140, 141, 228, 229, 142, 143, 169, 260, 173, 315, 261, 395, 727.

(j) Government's Exhibits O-31 to O-127 and T-4 to T-36, being telephone company records relating to services rendered certain defendants and in no way connected with defendants Johnson and Brown or with other defendants not named on the respective exhibits. R. 208, 704-706.

1484 (k) Government's Exhibits O-128 to O-134, O-136, O-138, O-140 to O-145, O-147 to O-151, O-153, O-155, O-157 to O-159, O-162, O-163, O-166 to O-173, and O-176 to O-182 being receipted transfer bills for service rendered by Jungwirth for certain defendants and in no way connected with defendants Johnson, Flanagan and Brown. R. 271.

(l) Government's Exhibits O-191 to O-201, being records of Hollander for service rendered defendants Sommers and Hartigan and in no way connected with defendants Johnson, Flanagan, Kelly and Brown. R. 345.

(m) Government's Exhibits X-139 to X-164, being Albany Park Currency Exchange records in no way connected with defendants Johnson, Flanagan and Brown and only indirectly connected with defendants Kelly and Hartigan. R. 499, 506.

(n) Government's Exhibit X-191, being deposit tickets showing transactions between Albany Park Currency Exchange and Milwaukee Avenue Bank, with which defendants Johnson, Flanagan and Brown had no connection and with which defendants Sommers, Hartigan and Kelly were remotely connected as patrons of the exchange. R. 502, 503.

(o) Government's Exhibits X-170 and X-171, being records showing transactions between Northern Trust Company and defendant Sommers, with which defendants Johnson, Flanagan, Hartigan, Kelly and Brown had no connection. R. 510.

(p) Government's Exhibits X-186 to X-190, being records showing transactions between Mid-City National Bank and defendant Creighton, with which these defendants had no connection. R. 519-521.

(q) Government's Exhibits X-195 and X-196, being records of the Lawrence Avenue Currency Exchange, with which defendants Johnson and Flanagan had no connection. R. 530.

1485 (r) The group of Government exhibits under X-172, X-173 and X-174, being memoranda on the backs of checks showing shipments of \$100 bills to the Lawndale

Currency Exchange, with which defendants Johnson, Sommers, Hartigan, Kelly and Brown had no connection and with which defendant Flanagan was only inferentially connected. R. 565, 566.

(s) Government's Exhibits X-182 to X-185-R, being records of the North Shore National Bank showing transactions with the Lawrence Avenue Currency Exchange, with which defendants Johnson and Flanagan had no connection and with which defendants Sommers, Hartigan and Kelly were remotely connected as patrons of the exchange. R. 579-581.

(t) Government's Exhibits X-178 and X-179 and the group under X-180, being records of the Central National Bank showing transactions with the Lawrence Avenue Currency Exchange, with which defendants Johnson and Flanagan had no connection and with which defendants Sommers, Hartigan and Kelly were remotely connected as patrons of the Exchange. R. 609, 610, 735.

(u) Government's Exhibits X-238 to X-251, being checks cashed by defendant Creighton and not connected with any of these defendants. R. 721.

(v) The group of Government exhibits under O-212 to O-218, being records of E. M. O'Neil & Company showing deliveries to one Morgan and not connected with these defendants. R. 734.

(w) Government's Exhibit O-219 to O-227, being the Laemmle checks which are not connected with defendants Johnson, Flanagan, Hartigan and Kelly. R. 773, 774.

40. The Court erred in permitting improper cross-examination of defendants on immaterial and collateral matters, to-wit:

1486 (a) Cross-examination of Sommers as to details of his income tax returns for 1932 and thereafter. R. 829-832.

(b) Cross-examination of Sommers as to details of operating a gambling house and destroying of records of gambling transactions. R. 825-829.

(c) Cross-examination of Creighton as to details of his income tax returns for 1932 and thereafter. R. 876, 877.

(d) Cross-examination of Kelly as to details of his income tax returns for 1934 and thereafter. R. 887-889.

(e) Cross-examination of Wait respecting the opening and operating of the Lawndale Kennel Club in 1927 and operating relations and financial arrangements between it and Hawthorne in 1928 and thereafter. R. 903, 904.

(f) Cross-examination of Wait as to details of his income tax returns. R. 909, 910.

(g) Cross-examination of Wait relative to his gambling with Laemmle in 1936. R. 908, 909.

(h) Cross-examination of Wait relative to his relations with Skidmore and as to whether Skidmore was the fixer for gamblers of Chicago. R. 913, 914.

(i) Cross-examination of Johnson respecting the opening and operating of the Lawndale Kennel Club in 1927 and operating relations and financial arrangements between it and Hawthorne in 1928 and thereafter.

(j) Cross-examination of Johnson relative to whether Skidmore was the fixer for Chicago gamblers and statement of prosecuting attorney that he could prove if necessary that gamblers and bookmakers lined up at Skidmore's office to pay their protection money. R. 965, 966.

1487 (k) Cross-examination of Johnson relative to arrangements for official protection in Lake County and suggestion of bribery of sheriff to permit operation of Bon-Air. R. 967-969.

(l) Cross-examination of Johnson relative to ownership and operation of Waukegan Post. R. 967.

(m) Cross-examination of Johnson relative to arrangements for official protection in Cook County and suggestion of bribery of the Chief of the County Police to permit operation of Club Western. R. 975, 976.

(n) Cross-examination of Johnson relative to organization and ownership of E. M. O'Neil & Company, a corporation dealing in gambling paraphernalia. R. 980, 981.

(o) Cross-examination of Johnson on the subject of filing a partnership return re income from properties of which he and Skidmore were joint owners. R. 983.

(p) Cross-examination of Johnson relative to statement made by him to Government agents in 1932 concerning his operation of gambling houses in 1929. R. 987-989.

41. The Court erred in permitting cross-examination of defendant Johnson implying that he was guilty of bribing public officials. R. 975, 976, 966-969.

42. The Court erred in examining witnesses indicating a lack of belief in the testimony of the witnesses or treating lightly or diverting the attention of the jury from the material testimony of the witnesses, to-wit:

(a) Examination of witness Pfingsten relative to knowledge of use of leased premises and whether public liability

insurance covering liability from use for gambling purposes was carried. R. 853.

1488 (b) Examination of witness Hare implying that he had not told the truth. R. 915, 916.

(c) Examination of witness Rebman as to mysteries of the game of Red and Black. R. 573.

(d) Examination of defendant Sommers as to percentage in roulette against player and in favor of the house. R. 845-847.

43. The Court erred in permitting the prosecuting attorneys to state repeatedly in the presence of the jury that offered evidence would be connected up, when objection to receiving such evidence was made by defendants, (R. 9-10, 50-51, 70, 91, 99-100, 111-114, 117, 138, 174, 176, 293, 421), and in acting upon such promises without question, (R. 9-10, 51, 70-71, 91, 101, 111-114, 118, 138, 174, 176, 294, 421), and in stating in the presence of the jury that the offer of defendants' attorneys to connect up evidence meant nothing to the Court without a definite undertaking (R. 930), and in peremptorily striking evidence of defendants when connection was not immediately made. R. 924.

44. The Court erred in permitting cross-examination of defendants (R. 912, 945, 965) and the direct examination of Agent Sloan (R. 777-780) relative to the whereabouts of certain persons, thereby implying that these defendants were secreting witnesses.

45. The Court erred in receiving the testimony of the witness Huebsch in rebuttal of testimony of defendant Johnson respecting statements made by Johnson in 1932 as to his connection with the gambling house at 2141 South Crawford and other gambling houses in Chicago in 1929. R. 996-998.

46. The Court erred in refusing to allow defendant Johnson's attorney to see the purported 1932 statement of defendant Johnson from which the prosecuting attorney read questions and answers as a foundation for the impeaching testimony of the witness Huebsch, which statement the prosecuting attorney used in the presence of the jury in the course of his cross-examination of defendant Johnson. R. 989.

47. The Court erred in receiving the testimony of the witness Ross in rebuttal of the testimony of defendant Wait with respect to the place where defendant Wait gambled with Carl Laemmle in May 1936. R. 999, 1000.

48. The Court erred in not receiving in evidence the

indictment against the defendant Sommers, defendants' Exhibit S-33, in which the grand jury that returned this indictment charged defendant Sommers individually with the income which it is here charged was the income of defendant Johnson. R. 842, 843.

49. The Court erred in not receiving in evidence the indictment against the defendant Kelly, defendants' Exhibit K-4, in which the grand jury that returned this indictment charged defendant Kelly individually with the income which it is here charged was the income of defendant Johnson. R. 880.

50. The Court erred in permitting the witness Lawrason to give a summary of Recordak films with no opportunity to defendants to cross-examine intelligently because the films were illegible and no proper foundation was laid for receiving them in evidence. R. 715-721.

51. The receipt in evidence of the Recordak films and the summary of what Agent Lawrason said he learned from them, by an examination out of the presence of the defendants and the jury requiring several weeks of time, was a violation of the constitutional right of the defendants to be confronted with witnesses and to be represented by counsel in making their defense. R. 519-521, 715-721.

1490 52. The Court erred in permitting witness Clifford to answer an improper hypothetical question and in refusing to strike his testimony which was an invasion of the province of the jury. R. 740-745, 762.

53. The Court erred in receiving in evidence against all other defendants witness Clifford's computations of income and expenditures of defendant Johnson. R. 740-745.

54. The Court erred in refusing to give to the jury requested Instruction 5, (R. 1024), requested Instruction 8, (R. 1024-5), requested Instruction 10, (R. 1025), requested Instruction 16, (R. 1025), requested Instruction 18, (R. 1025-6), requested Instruction 22, (R. 1026), requested Instruction 23, (R. 1026-7), requested Instruction 26, (R. 1027), requested Instructions 27, 28 and 29, (R. 1027), requested Instruction 30, (R. 1027-8), requested Instruction 31, (R. 1028), requested Instruction 37, (R. 1028), requested Instruction 41, (R. 1029), requested Instruction 44, (R. 1029-30), requested Instruction 46, (R. 1030), requested Instruction 47, (R. 1030), and requested Instruction 78, (R. 1032).

55. The Court erred in sending to the jury on their retirement written statements (depositions) of certain de-

fendants, thereby placing undue emphasis upon a statement received only as to the defendant making it but containing hearsay matter with respect to other defendants, to-wit:

(a) The statement of defendant Johnson, Government's Exhibit O-207, which contained statements relating to defendants Flanagan and Kelly. R. 410, 1023.

(b) The statement of defendant Sommers, Government's Exhibit O-210, which contained statements relating to defendants Johnson, Hartigan and Brown. R. 462, 1023.

1491 (c) The statement of defendant Kelly, Government's Exhibit O-208, which contained statements relating to defendants Johnson and Hartigan. R. 458, 1023.

(d) The statement of defendant Hartigan, Government's Exhibit O-209, which contained statements relating to defendants Johnson, Sommers and Brown. R. 462, 1023.

(e) The grand jury testimony of defendant Brown, Government's Exhibit O-211, which contained statements relating to defendants Johnson, Hartigan, Sommers, and Kelly. R. 614, 1023.

56. The Court erred in sending to the jury the income tax returns of defendants other than those of defendant Johnson for the years 1936, 1937, 1938 and 1939. R. 1023.

57. The Court erred in sending to the jury the five books of account of Nationwide News Service, each consisting of several hundred separate customers' accounts in no way identified by the testimony of any witness with defendants Sommers, Kelly, Hartigan or Brown. R. 1023.

58. The Court erred in sending to the jury the five books of account of Nationwide News Service, each containing several hundred separate customers' accounts in no way identified with defendant Johnson by the testimony of any witness and some customers' accounts having written thereon with pen and ink memoranda referring to "Bill Johnson," without proof of who wrote the memoranda or when they were written or to whom they referred, or other foundation facts. R. 1023.

59. The Court erred in sending to the jury several boxes containing several hundred Recordak films which were illegible and were hearsay as to the several defendants and in no way connected with them or any of them or with any transaction with which they were or any of them was identified by testimony of any witness. R. 1023.

1492 60. The Court erred in sending to the jury the books of account of Bon-Air Catering Company and

auditors' reports and working papers relating thereto, which were hearsay as to defendants Sommers, Flanagan, Kelly and Brown. R. 1023.

61. The Court erred in sending to the jury the numerous suppliers' accounts with Bon-Air Catering Company and with Lightning Construction Company which were hearsay as to defendants Sommers, Flanagan, Kelly and Brown. R. 1023.

62. The Court erred in sending to the jury the General Mortgage Company accounts with and reports to defendant Johnson which were hearsay as to defendants Sommers, Flanagan, Hartigan and Brown. R. 1023.

63. The Court erred in sending to the jury the Chicago Title & Trust Company records relating to transactions with defendant Johnson which were hearsay as to all other defendants. R. 1023.

64. The Court erred in sending to the jury the map of Chicago with locations of many gambling houses marked by thumb tacks, Government's Exhibit O-1, which was hearsay as to defendants Johnson and Brown, and except as to their respective houses hearsay as to other defendants. R. 1023.

65. The Court erred in sending to the jury records of the Lawrence Avenue Currency Exchange which were hearsay as to defendants Johnson and Flanagan, and with which defendants Sommers, Hartigan and Kelly had no relation except as patrons of the exchange. R. 1023.

66. The Court erred in sending to the jury records of the Albany Park Currency Exchange which were hearsay as to defendants Johnson, Flanagan and Brown, and with which defendants Sommers, Hartigan and Kelly had no relation except as patrons of the exchange. R. 1023.

1493 67. The Court erred in sending to the jury records of the Lawndale Currency Exchange which were hearsay as to defendants Johnson, Sommers, Kelly, Hartigan and Brown, and with which defendant Flanagan had no relation except as a patron of the exchange. R. 1023.

68. The Court erred in sending to the jury records of the North Shore Bank which were hearsay as to defendants Johnson and Flanagan, and with which defendants Sommers, Hartigan and Kelly had no relation except as patrons of the Lawrence Avenue Currency Exchange. R. 1023.

69. The Court erred in sending to the jury records of the Mid-City Bank which were hearsay as to all these defendants. R. 1023.

70. The Court erred in sending to the jury records of the

Federal Reserve Bank which were hearsay as to all these defendants. R. 1023.

71. The Court erred in sending to the jury records of the Northern Trust Company which were hearsay as to defendants Johnson, Flanagan, Kelly, Hartigan and Brown, and with which defendant Sommers had no relation except as a patron of the Bank. R. 1023.

72. The Court erred in sending to the jury records of the Illinois Bell Telephone Company which were hearsay as to defendants Johnson and Brown, and, except as to their respective telephones, to all the rest of these defendants. R. 1023.

73. The Court erred in sending to the jury the Laemmle checks which were hearsay as to defendants Johnson, Flanagan, Kelly and Hartigan, and to defendant Sommers, except his act in cashing them for Wait. R. 1023.

74. The Court erred in sending to the jury the Bissell checks which were hearsay as to defendants Johnson, Flanagan, Kelly and Hartigan, and with which defendant 1494 Brown had no connection except to cash them for Sommers. R. 1023.

75. The Court erred in sending to the jury the Blake checks which were hearsay as to all these defendants. R. 1023.

76. The Court erred in denying defendants' motion to withdraw a juror and to declare a mistrial on account of improper cross-examination of the defendants and the prejudicial remarks of the prosecuting attorney, to-wit:

(a) Insinuation that defendants Johnson and Sommers muscled the Graves out of the Harlem Stables and stole their stock and fixtures. R. 284-285, 290-291.

(b) Insinuation that defendant Johnson bribed public officials to purchase protection for operating gambling houses. R. 1003, 967-969, 975-976, Tr. 151.

(c) Insinuation that defendants Sommers, Flanagan, Hartigan and Kelly purchased protection through Skidmore for operating their respective gambling houses. R. 1003, 965-966.

77. The Court erred in not sustaining the motions of the several defendants for a directed verdict on the several counts of the indictment at the conclusion of the evidence for the prosecution. Tr. 145-148.

78. The Court erred in not sustaining the motions of the several defendants for a directed verdict on the several

counts of the indictment at the conclusion of all the evidence. Tr. 150-151, 1003-1004.

79. The Court erred in not requiring the prosecution to elect whether it would proceed under the first four counts or under the fifth count. Tr. 145-146, 148-9, 152.

80. The verdict of the jury was contrary to the law.

81. The verdict of the jury was contrary to the weight of the evidence.

1495 82. The jury did not give defendants the benefit of the rule of presumption of innocence and the rule of reasonable doubt to which they were entitled.

83. The verdict was the result of passion and prejudice on the part of the jury.

84. These defendants were denied their constitutional right to a fair and impartial trial.

85. The Court erred in denying the motions of the several defendants for a new trial.

86. The Court erred in denying the motions of the several defendants in arrest of judgment.

87. The Court erred in entering judgment on the verdict.

88. The sentences imposed on the several defendants are inconsistent and unconscionable.

Wherefore, the defendants, William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown pray that the judgment herein may be reversed and annulled for the errors which occurred on the trial and that they and each of them may be restored to all things which they have lost by reason of said judgment.

William R. Johnson,

Defendant.

By Floyd E. Thompson,

His Attorney.

Jack Sommers, James A. Hartigan,

John M. Flanagan, William P.

Kelly and Stuart Solomon Brown,

Defendants.

By Edward J. Hess,

John E. Byrne,

George F. Callaghan,

Their Attorneys.

1496 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

United States of America,	}	Indictment for Violation of Sec. 145(b), Revenue Acts of 1936 and 1938, and Sec. 88, Title 18, U. S. Code. No. 32168.
<i>Plaintiff,</i>		
<i>vs.</i>		
William R. Johnson, <i>et al.</i>		
<i>Defendants.</i>		

The foregoing bill of exceptions, in two volumes, duly proposed by defendants William R. Johnson, Jack Sommers, James A. Hartigan, John M. Flanagan, William P. Kelly and Stuart Solomon Brown, and duly presented to the Court within the time allowed by law and by the rules and orders of this Court and of the United States Circuit Court of Appeals for the Seventh Circuit, after due notice to the United States Attorney, contains all the evidence introduced at the trial of said cause stated in narrative form and an index of the exhibits in evidence and of defendants' refused exhibits and the instructions given by the Court to the jury and the instructions requested by defendants and refused by the Court, and all motions, objections and rulings of the Court which are the basis of the assignments of error, and said bill of exceptions is hereby settled, allowed, signed and authenticated as in the proper form and as conforming to the truth and is the true bill of exceptions herein and is hereby made a part of the record in this case.

It is further Ordered that said bill of exceptions and the assignments of error attached thereto and the exhibits introduced in evidence on the trial and defendants' refused exhibits, all now in the custody of the Clerk of this Court, shall be transmitted by the Clerk of this Court to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, together with a certificate certifying the bill of exceptions as a part of the record and the exhibits as the original exhibits in the case.

Dated, January 21, 1941.

John P. Barnes,
United States District Judge.

The foregoing bill of exceptions in two volumes of which this is the second was presented in open court this 19th day of December 1940.

John P. Barnes,
Judge.

1498 Northern District of Illinois, }
Eastern Division. } ss.

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the Assignment of Errors and Bill of Exceptions made in accordance with Praecipe filed in this Court in the cause entitled United States of America vs. William R. Johnson, et al. D. C. 32168 as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 21st day of January, A. D. 1941.

Hoyt King,
Clerk.

(Seal)

CLERK'S COPY.

VOLUME IV.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941 1942

Nos. ~~799-800~~ 4-5

THE UNITED STATES OF AMERICA, PETITIONER

VS.

WILLIAM R. JOHNSON

THE UNITED STATES OF AMERICA, PETITIONER

VS.

**JACK SOMMERS, JAMES A. HARTIGAN, JOHN M.
FLANAGAN, ET AL.**

**ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT**

FILED DECEMBER 12, 1941



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 799-800

THE UNITED STATES OF AMERICA, PETITIONER

vs.

WILLIAM R. JOHNSON

THE UNITED STATES OF AMERICA, PETITIONER

vs.

JACK SOMMERS, JAMES A. HARTIGAN, JOHN M.
FLANAGAN, ET AL.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT

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1 In the District Court of the United States of America for
the Northern District of Illinois, Eastern Division

D. C. No. 32168

UNITED STATES OF AMERICA

v.

WILLIAM R. JOHNSON, JACK SOMMERS ET AL.

Petition for amplification of the record

Now comes the United States of America by J. Albert Woll, United States Attorney for the Northern District of Illinois, and respectfully represents unto this Court that the bill of exceptions in this cause was allowed and approved and made a part of the record by this Court on the 21st day of January 1941; that in the bill of exceptions, as so approved, appears in partial narrative form the testimony of the witness Frank J. Clifford;

That it appears that a full determination of the questions arising in this cause may be assisted by the inclusion in the record of the entire testimony of the said witness Frank J. Clifford in question and answer form rather than in the form in which it now appears.

Wherefore, your petitioner prays that this Court enter an order amplifying the record in this cause by certifying, approving, and making a part of the record the entire testimony of the said witness Frank J. Clifford in question and answer form.

J. ALBERT WOLL,

United States Attorney.

2 In the District Court of the United States

[Title omitted.]

Order amplifying record

And now this cause coming on to be heard upon the petition of J. Albert Woll, United States Attorney for the Northern District of Illinois, for the amplification of the record in this cause, and the Court having examined the petition of the United States Attorney and having examined the original court reporter's transcript of the testimony of the witness Frank J. Clifford taken during the trial of this cause, the Court now finds that the transcript of the testimony of the witness Frank J. Clifford in question and answer form is a true and correct trans-

script of the testimony of the said witness Frank J. Clifford, and that the same should be included and made a part of the bill of exceptions and the record in the cause, and in order that the record may speak the truth.

It is ordered, adjudged, and decreed that the entire testimony of the witness Frank J. Clifford in question and answer form taken during the trial of this cause be, and it is, hereby made a part of the record on appeal.

It is further ordered that the Clerk of this Court be, and he is, hereby directed to certify copies of this petition and order and to transmit the said petition and order and the said transcript of the testimony of the witness Frank J. Clifford to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit as an amplification of the record in this cause now pending in that court numbered 7500 and 7501.

The above-mentioned transcript is identified by the signature of the undersigned judge at page numbered 3956 thereof.

To the entry of which order defendants object and except and particularly to the jurisdiction of the Court to enter same.

Given under the hand of the Court before whom said proceedings were had this 30th day of September 1941.

JOHN P. BARNES, *Judge*.

4 In the District Court of the United States

[Title omitted.]

Answer to petition for amplification of the record

And now come the defendants herein by their respective counsel, and for reply to plaintiff's petition for amplification of the record, state to the Court as follows:

I

That the judgment of this Court herein upon the verdict therefore rendered by the jury was entered on October 23, 1940:

That thereafter and on the same date notices of appeal to the United States Circuit Court of Appeals, Seventh Circuit, from said judgments were filed with the Clerk of this Court in accordance with the rules of this Court applicable in such cases:

That thereafter the said appeals were perfected in accordance with said notices and the bill of exceptions approved by this Court on to-wit, January 21, 1941:

That thereafter written briefs and arguments and reply briefs were filed by the respective parties in said Circuit Court of Appeals and the said appeals were orally argued at length on to wit, May 27, 1941:

That on to wit, September 15, 1941, the said Circuit Court of Appeals rendered its opinion reversing the judgments appealed from, and the cause in said Court is awaiting the reception of petition for rehearing by the plaintiff, to which petition, if one is filed, defendants are entitled to file a reply.

II

Further answering, these defendants say that at no time during any of the proceedings aforesaid did the plaintiff herein
5 apply for a diminution or amplification of the record, or any part thereof, in said Circuit Court of Appeals, and said Court has not of its own motion or otherwise directed or ordered any diminution or amplification thereof.

III

Further answering, these defendants reserve unto themselves and do not by the filing of this answer waive any right or rights of objection to the jurisdiction of this Court to grant the relief requested in plaintiff's said petition; nor to object to proceedings thereunder, and, on the contrary, here assert that upon the filing of the aforesaid notices of appeal and the perfection of said appeal as aforesaid, the entire control of said appeals rested with the said United States Circuit Court of Appeals, Seventh Circuit.

IV

These defendants deny that plaintiff is entitled to the relief prayed for in said petition.

EDWARD J. HESS,

One of Counsel for Defendants.

FLOYD E. THOMPSON,

11 S. LaSalle Street,

EDWARD J. HESS,

111 W. Monroe Street,

JOHN ELLIOTT BYRNE,

105 W. Adams Street,

Attorneys for Defendants.

In United States District Court

Transcript of testimony of Frank J. Clifford

FRANK J. CLIFFORD, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HURLEY:

Q. Will you state your name?

A. Frank J. Clifford.

Q. C-l-i-f-f-o-r-d?

A. That is right.

Q. Where do you live, Mr. Clifford?

A. Park Ridge, Illinois.

Q. What is your employment?

A. Internal Revenue Agent.

Q. How long have you been an Internal Revenue agent?

A. Almost fifteen years.

Q. How long have you been assigned to the Chicago office?

A. The entire time.

Q. In a general way, of what does your work consist as an Internal Revenue agent?

8 A. Examination and verification of income tax returns filed, from books and records.

Q. What has been your training and experience in accounting from an educational standpoint, Mr. Clifford?

A. I completed the accounting course offered by the Walton School of Commerce.

Q. That was for how many years?

A. Four years.

Q. What has been your training and experience in accounting from a practical standpoint?

A. In addition to that, Revenue Agent, and about five years in industrial accounting.

Q. And in the course of your work, did you have occasion to examine books and records?

A. Yes.

Q. In the course of your duties as an Internal Revenue agent, were you assigned Government's Exhibits R-10, R-11, R-12, and R-13, in evidence—

A. I was.

Q. (Continuing.) Being the individual income tax return for the defendant William R. Johnson, for examination and audit?

A. I was.

9 Q. Did you, in the course of your duty, also have available, Government's Exhibits R-6, R-7, R-8, and R-9, in evidence, being the returns for the years '32 through '35?

A. I did.

Q. By whom were you assigned?

A. Mr. L. H. Wilson, my superior revenue agent.

Q. What is Mr. Wilson's title?

A. He is a revenue agent, also.

Q. What, if anything, did you do in connection with that assignment?

A. The first return I got was for the year 1937, and I called the office of Mr. Joseph Johnson and told him I had the return of Mr. William Johnson for that year and would like to get in touch with him.

Q. About when was that, that you called Mr. Joseph Johnson?

A. That would be the latter part of January, '39. A couple of days later, Mr. Radomski called me.

Q. Is that Joseph Radomski?

10 A. Mr. Joseph Radomski, and made an appointment to go out to an office on South Green street, where he had the records. I went out there. I think it was January 27th, '39, and examined what records he had, which were the farm and the real estate.

Q. What records were there with reference to this item of the farm and the real estate?

A. The farm was cash receipts and expenditures book, a summary sheet—ledger sheet—and a lot of invoices, paid invoices; for the real estate, was monthly statements submitted by Mr. Tavelin, cancelled checks of the two buildings, at Thorndale and Glenwood and Division and Dearborn. Those were accounts with the Northern Trust.

Q. The reports on the real estate you refer to, are they Government's Exhibits E-7, E-9, E-12, E-14, E-15, E-16, E-17, E-18, E-19, E-20, E-22, E-23, E-24, E-25, and E-26; do you recall?

A. Copies of those exhibits.

Q. I show you the exhibits which I have just read, and ask you if they are the copies you saw at that time?

A. It was copies of these for the year '37 only.

11 Q. What did you do with reference to those books and records that you saw in Radomski's office?

A. I examined them and compared them with the figures that were shown on Mr. Johnson's return.

Q. And the farm records you speak of, what farm was that?

A. Sunny Acres Farm.

Q. You saw there cash receipts and disbursement books, and what were the other documents you saw there?

A. A summary sheet, which was in effect the ledger and pay invoices.

Q. Now, what if anything did you do with those books and records that you have described in Mr. Radomski's office?

A. I made an extract from the summary sheet of the operating expenses, as well as the capital items purchased during that year.

Q. That was for what year, Mr. Clifford?

A. That was for 1937.

Q. And did you have, as the result of that examination, do you have the records showing what those items were that you determined from those books and records?

12 A. The operating expense items are in accordance with the return. I checked those. The capital items is about one hundred and two thousand. The personal expense was about thirty-two thousand.

Q. When you say one hundred and two thousand—

A. Dollars.

Q. That was the expenditure, was it?

A. That was outside of the capital expenditures made during that year for improvements, cattle, machinery, equipment, *equipment*, and so forth.

Q. Were there any other records than those you have described submitted to you in Radomski's office?

A. No. I asked him if he had anything on the gambling income.

He said no, the figure on that return was given to him by Mr. Johnson. He did not have any detail on that.

Q. Did you later talk to William R. Johnson?

A. Yes. When I got back to the office I called Mr. Joseph Johnson's office again and told him I would like to talk to

13 Mr. William Johnson personally. We made an appointment to meet him in Mr. Joseph Johnson's office in the afternoon, February 3rd, '39.

Q. Yes?

A. I met Mr. Johnson on that day.

Q. That is William R. Johnson?

A. Mr. William R. Johnson.

Q. Who else was present at that time, Mr. Clifford?

A. Mr. Joseph Johnson and myself.

Q. What if anything was said by yourself and William R. Johnson on that occasion?

A. I asked him what record—I told him that Joe Radomski did not have any records on the gambling, and I asked him what

he had, and he said that all he had was a notation in a memorandum book showing the monthly total. I asked him if that is the only record he ever kept. He said no, he kept a daily summary, but at the end of the month he destroyed that. He did not have that little book with him. He told me that it was out on the farm. He would pick the figures out of it and send them to me. I also asked him about the purchase price
14 of the farm. He told me one hundred and forty-five thousand. He said it had the residence and usual farm buildings, a few horses, which he admits giving away, and a few cows and hogs. He further stated that he had made several improvements bought new machinery, and so forth.

Q. Was there anything further said at that time that you recall?

A. I don't recall anything more then.

Q. What is that?

A. I don't recall anything more at that time.

Mr. THOMPSON. Speak up just a little louder, Mr. Clifford, please.

Mr. HURLEY. Q. Did you at any time later after this conference you have described receive any figures from him?

A. Yes; several days later I went over to Mr. Joseph Johnson's office and picked up a piece of paper on which was shown the figures covering gambling for 1937.

Q. And from whom did you receive it?

A. Mr. Joseph Johnson.

Q. Do you have that document?

15 A. Yes.

Q. Did you see the Defendant, William R. Johnson, after that last date you have described, Mr. Clifford?

A. The next time I saw him was in Mr. L. H. Wilson's office, March 27, '39, at which time a question and answer statement was taken from Mr. Johnson.

Q. Who else was present at that time, if you recall?

A. Mr. Wilson, Mr. Riley Campbell, Mr. Johnson, and myself, and Miss Wakefield, the stenographer.

Q. I show you Government's Exhibit O-207 in evidence. I will ask you to look at it, Mr. Clifford.

A. Yes.

Q. Is that the statement, the question and answer form which you referred to?

A. Yes, sir.

Q. Now, did you see the Defendant William R. Johnson at any other time subsequent to the date you just mentioned?

A. The next time I saw him was in November, November 3rd, '39, in the office of Mr. W. A. Summers, Special Agent.

Who else was there at that time?

16 A. Those present at that time was Mr. Summers, Mr. Converse, Mr. Johnson, Mr. Wait, and myself.

Q. What Mr. Wait was that?

A. Mr. Ed Wait.

Q. Indicating the Defendant Wait?

A. Yes.

Q. Did you talk to the Defendant Johnson at that time?

A. I did.

Q. What did he say to you and what did you say to him?

A. I called his attention to the fact there was no record on the books of the catering company for the Bon-Air land. He said, "That is mine." I asked him were the credits on the books of account his. He said those were advanced by me. That applies also to the account of Bud Geary. I asked him if he owned 9730 South Western Avenue. He said, "Yes." When I asked him as to the cost of Bon-Air and 9730, he referred me to Mr. William Goldstein.

Q. What did he say, referring you to Goldstein?

17 A. I asked him if he knew what the costs were. He said, "You get in touch with Mr. Goldstein. He will give you the details and the cost."

Q. Was there anything else said between yourself and Johnson at that time, do you recall?

A. I made a notation of the conference. I can't recall what else now without referring to it.

Q. Do you have your notation?

A. I do.

Q. Will you refer to it, please?

A. Yes.

Mr. THOMPSON. I want the record to show that the witness is referring to a memorandum which we should desire to see on cross-examination.

The WITNESS. That is all.

Mr. HURLEY. Q. There wasn't anything further?

A. There was a remark by Mr. Wait.

Q. I am just asking you about Johnson. At that time and place did you talk to Mr. Wait or did he talk to you?

A. I asked Mr. Wait a question. I asked him if the credit shown on the books at the Bon-Air was his. And he said it was.

Q. Did you ever have occasion to go to an address
18 known as 3428 Lawrence Avenue?

A. Yes, sir.

Q. About when was that?

A. The afternoon of October 31, '39.

Q. And what did you do when you arrived at 3424?

A. When I went out there it was for the purpose of getting in touch with Mr. Brown, of the Lawrence Avenue Currency Exchange. When I got there I found it was closed. The young lady gave me Mr. Brown's home address, 4200 Hazel Street. So I went over there. There was no answer to my pushing on the button. So I left a note in Mr. Brown's mail box to call me up the next day, to call me. The next morning I got a call. It said it was Mr. Brown. I told him I would like to look at the—

Mr. THOMPSON. We object to this as hearsay conversation and not binding on any of these defendants, except the Defendant Brown, if he is identified.

The COURT. Sustained as to the other defendants. Overruled as to the Defendant Brown.

19 Mr. HURLEY. Q. Now, what talk did you have with this man that said he was Mr. Brown? What was the first name of this Mr. Brown you talked to?

A. S. S. Brown. I had the name on the card.

The COURT. We will recess at this time until two o'clock P. M. (A recess was taken at 12:30 o'clock P. M. to 2:00 o'clock of the same day, being Tuesday, September 24th, 1940.)

20

UNITED STATES OF AMERICA

vs.

WILLIAM R. JOHNSON ET AL.

Before Judge BARNES and Jury

Tuesday, September 24, 1940.

2:00 o'clock p. m.

Court met pursuant to recess.

Present: Mr. Wm. J. Campbell, Mr. E. Riley Campbell, Mr. Hurley, Mr. Plunkett, Mr. Miller, Mr. Thompson, Mr. Hess, Mr. Callaghan.

The COURT. Proceed.

FRANK J. CLIFFORD, resumed the stand, testified further as follows:

Direct examination (continued) by Mr. HURLEY:

Q. Are you the same Frank J. Clifford who was on the stand before recess?

A. Yes, sir.

Q. Now, calling your attention to the computation you
21 said that you made with reference to documents in the form
of cash books and the summary sheets in Radomski's office,
can you give us the exact figure of your computation on that,
Mr. Clifford?

A. For the capital items it is \$102,223; for the personal items,
it is \$3,238.14.

Q. Was there an item as to the personal items that you have
referred to for each of these years, '32 to 1939?

A. These are for the years '37 and '38. There are no personal
on any of the other years.

Q. Very well. Now, did you at a time later than the date
which you have testified you were out at Mr. Radomski's office,
were you there at a later time?

A. Yes, sir.

Q. And when was that?

A. That was in the fore part of May 1939.

Q. And had you talked to the defendant William R. Johnson
before you went to Radomski's office?

A. Yes; when I met him in Mr. Wilson's office on March 27th
I told him that I would like to continue with the year 1938, but
as I didn't have the original return would it be all right to work
from his copy and he said yes. Within a short time
22 thereafter Mr. Radomski called me and we made an ap-
pointment, but I was not able to keep that for some little
time later and I wasn't able to get out there until the first part
of May.

Q. 1939?

A. 1939.

Q. Did you at that time make a computation as to the amount
shown on the documents which you examined at that time?

A. Those which were not on the return. That is, the capital
items and the personal items.

Q. And from what did you get that information?

A. From the records that Mr. Radomski had, the summary
sheet.

Q. And were those the books and records of the defendant
Johnson, if you know?

A. They were.

Q. And what figure did you arrive at as a result of your
examination of those documents and books?

A. For the capital items, the figure \$16,809.26; the items
charged to the personal account were \$3,002.49.

Q. And those were for what year?

A. That was for the year 1938.

23 Q. Now, I believe when Court adjourned for lunch you were testifying about a phone conversation with a man named Brown. Will you tell us when you first talked over the phone with this man named Brown?

A. It was on the morning of November 1st, 1939. I got a call from this party who said he was Mr. Brown.

Q. What did he say and what did you say to him?

Mr. THOMPSON. We object. That is already in once.

Mr. HURLEY. Not the entire conversation, as I recall it.

Mr. THOMPSON. Yes; but the Court has already confined it to Brown. He hasn't even identified the defendant Brown.

Mr. HURLEY. He is only testifying it was a man who said he was Brown. The witness left a note in the mail box at the apartment where he was told this Brown lived and subsequently he gets a call from a man who says his name is Brown.

Mr. THOMPSON. All of which, from counsel's statement, is hearsay.

24 The COURT. How did you get this address that you went to?

The WITNESS. From the girl who was out at the 3424 address, Lawrence Avenue address, who I later learned to be Mrs. Koop.

The COURT. Do you know whose voice it was?

The WITNESS. I didn't.

The COURT. Do you now?

The WITNESS. No; I wouldn't know. I asked him a question to identify him.

The COURT. Well, I don't know what that was. I will hear what it was. What was it?

The WITNESS. I asked him if he was the man who operated the Lawrence Avenue Currency Exchange and he said he was.

The COURT. Strike it out.

Mr. HURLEY. The Grand Jury testimony of Brown himself says that he had talked to Clifford.

The COURT. It may be admissible—

Mr. HURLEY. Against Brown.

The COURT (Continuing.) Against Brown. What is the purpose of this?

Mr. HURLEY. To show that Brown told him too that the records—he told him that he wanted to talk to him about the
25 records and Brown says it won't do any good to talk to me about that. I have already destroyed them. That is stronger testimony than the Grand Jury testimony.

The COURT. You say Brown testified he talked to Clifford?

Mr. HURLEY. He had had a phone call from Clifford.

Mr. HESS. He didn't say Clifford, he said some agent.

Mr. HURLEY. As I recall it he said Clifford.

Mr. HESS. No; the interrogator said that; the interrogator used that name. He didn't know who it was any more than the man in the moon, according to that record you read.

The COURT. I will let him testify and it will be admissible only against Brown.

Mr. HURLEY. Q. Did you talk to this man that said his name was Brown over the telephone?

A. I did.

Q. What did he say to you and what did you say to him?

A. When he told me he was Mr. Brown I asked him if he was the Mr. Brown who operated the Lawrence Avenue Currency Exchange and he said he was, and I then told him that I would like to examine the records of the Lawrence Avenue Currency Exchange and he said, "Well, you can't very well do that because I have already destroyed them." I asked him to come downtown anyway so that I could talk to him about the records generally and he made an appointment to come down at 1:30 in the afternoon of that day. At 1:30 I got a call from the man who said he was Mr. Brown, and to me it seemed to me like the same voice, who said he couldn't make it, he would be down the next morning at 9:30, and the next morning at about that time I got a call from a woman who said she was Mrs. Brown, said that he had gone out of town.

Mr. HESS. That is objected to, if Your Honor please, not binding on any of them.

The COURT. It may stand as against Brown.

Mr. HURLEY. Q. Did you at any time subsequent to that have an appointment with the defendant Brown?

A. No; I was never able to get in touch with him after that.

Mr. THOMPSON. Oh, we object to that sort of statement.

27 The COURT. Strike it out. Answer the question.

The WITNESS. What was the question?

(Question read.)

A. No, sir.

Mr. HURLEY. Q. Now, have you made a computation and an analysis based on the exhibits X-178, X-179, X-181, and X-180-1 to X-180-389, and the other evidence in the record, to determine the amount of currency delivered by the Central National Bank to the Lawrence Avenue Currency Exchange between the months of July 1938 and September 1939, inclusive?

A. Yes, sir.

Mr. THOMPSON. We object to that.

The COURT. Overruled.

Mr. HURLEY. Q. And can you state what the amount shown by your computation is?

A. Approximately one million——

Mr. THOMPSON. Just a moment. The answer is yes or no.

The WITNESS. Yes, sir.

Mr. HURLEY. Q. And what is the amount?

Mr. THOMPSON. Now, we object. This is the question we
28 want to object to. There is no proper foundation laid for
any such computation. It is immaterial as to any issue
in this case. Tends in no way to show the taxable income of the
defendant Johnson. Furthermore, you can't lump figures for
fractions of three years, under any count of this indictment. It
is hearsay as to every defendant in this case, and particularly as
to the defendant Johnson.

The COURT. Overruled.

Mr. THOMPSON. Furthermore, the witness has not yet identified the documents from which he is testifying.

The COURT. Overruled.

A. The amount was approximately \$1,289,000.

29 Mr. HURLEY. Q. Can you give us the exact amount, Mr. Clifford?

A. I have not got it. That is just a computation I made.

Q. One computation you made?

A. Yes, sir.

Q. Now, Mr. Clifford, have you made an analysis and computation, based on Government's Exhibits admitted in evidence, Government's Exhibits R-6, R-7, R-8, R-9, R-10, R-11, R-12, R-13, being the income tax returns of the defendant Johnson for the years 1932 to 1939, inclusive; and Exhibits R-86, R-87, R-88, to and including R-106, inclusive, which are certified copies of the assessment list from April, 1929, to April, 1940, inclusive; and Exhibits E-7, E-9, E-12, E-14, E-15, E-16, E-17, E-18, E-19, E-20, E-22, E-23, E-24, E-25, E-26, E-27, E-27-A, E-28, E-28-A, E-29, E-29-A, E-30, E-30-A, E-31, E-31-A, E-31-B, E-32, E-32-A, E-33, E-33-A, E-33-B, E-34, E-34-A, E-35, E-35-A, E-36, E-36-A, E-37, E-37-A, B, C, D, E-38, E-38-A, E-39, E-39-A and B, being the escrow agreements, E-41, which is the escrow agreement of the Gary-Wheaton bank and
30 E-46 to E-66, inclusive, being the Bon Air and the Horwath records; E-71, E-72, E-77, E-78, E-81, E-82, E-83, E-84, E-85, E-86, E-87, E-88, E-89, E-90, E-91, and through to E-95, inclusive; E-97 to E-100, inclusive, and E-102, being the 1939 Bon Air expenditures, ledger sheets; and O-207; Exhibits X-1 to X-138, inclusive; X-139 to X-164, inclusive; X-170, and X-171, X-172-D, F, G, H, J, K, L; 173-V, W, T, Q, P, N, M, A, F, D, W, U, T, O, R, Q, P, N, H, G, E, D, F; X-174-A, B, C, D, E, F, H, J, L, M; X-178, X-181, X-182, X-183, X-184, X-185-A to V, X-191, X-191-A to X-191-5-Q, X-194, X-200

to X-207, inclusive; have you made a computation based on those exhibits which I have enumerated, and other evidence in the record, to determine the amount of the net cash income reported by the defendant William R. Johnson for the years 1932 to 1939, inclusive?

A. I have.

Q. Can you state what that amount is?

Mr. THOMPSON. We object to that as improper, to lump all of these things into one mass. It is not competent proof under any particular count of this indictment; it is not proper
31 identification of the evidence which the witness is to consider has been made; it is not a proper hypothetical question; it does not contain all of the elements required for such a question. It is otherwise immaterial, so far as the evidence in is concerned; in no way connected with the defendants.

The COURT. Overruled.

The WITNESS. A. The total amount of income reported over that period was \$1,188,041.85. Adding to that the amount that he had on hand as of the beginning of 1932, the total is \$1,256,041.85.

Mr. HURLEY. Q. Now, Mr. Clifford, based on those exhibits which I have enumerated, and the other evidence in the record, have you made a computation as to the expenditures of the defendant William R. Johnson for the years 1932 to 1939, inclusive?

A. I have.

Q. Will you state what that computation is; what the amount is?

Mr. THOMPSON. We object to that on the ground that you cannot lump expenditures over a period of ten years or so.
32 There is no identification of this requested answer to any particular count of the indictment in this case; that the offered proof will not prove, or tend to prove the taxable income of the defendant Johnson for the specific years 1936 or 1937 or 1938 or 1939, which are the only years covered by the indictment; and proper foundation has not been laid, and it is not properly stated; the hypothetical question does not contain all of the elements required in such a question, and it does contain elements which are improper to consider in such a question.

The COURT. Overruled.

The WITNESS. A. The total amount of those expenditures was \$1,730,391.39.

Mr. HURLEY. Q. That is for the period 1932 to 1939, inclusive?

A. Yes, sir.

Q. Have you made a computation from the figures which you have just given us as to what the excess of expenditures over net cash income reported was over that same period of time?

A. I have.

Q. Will you state what that amount is?

33 Mr. THOMPSON. We object on the grounds already stated to the last two questions on these computations.

The COURT. Overruled.

The WITNESS. A. The amount of such excess of expenditures over income is \$474,349.54.

Mr. HURLEY. Q. Now, Mr. Clifford, with the exhibits just a moment ago enumerated, and the other evidence in the record, have you made a computation to determine the total amount of gross income of the defendant Johnson for the calendar year 1936?

Mr. THOMPSON. Now, the answer——

Mr. HURLEY. Q. Have you made a computation? Answer yes or no.

The WITNESS. A. Yes.

Q. What is the amount, from your computation, of the gross income of the defendant Johnson for the calendar year 1936, according to your computation?

Mr. THOMPSON. If the Court please, there is no identification of any document which is being used by the witness, or any of the evidence that has been produced here in court from
34 which he has made his computation. We object that the question is not in proper form, the proper elements have not been stated, and the elements being included in the general character of the question are not proper to be considered.

The COURT. Read the question.

(Question read by the reporter as follows: "What is the amount, from your computation, of the gross income of the defendant Johnson for the calendar year 1936, according to your computation?")

Mr. HURLEY. No; the question before that.

(Question read by the reporter as follows: "Now, Mr. Clifford, with the exhibits just a moment ago enumerated, and the other evidence in the record, have you made a computation to determine the total amount of gross income of the defendant Johnson for the calendar year 1936?")

The COURT. You are making reference to those exhibits and the evidence in the record?

Mr. HURLEY. He used those as a basis for his computation.

The COURT. Overruled.

35 The WITNESS. What is the question?

(Question re-read by the reporter.)

The WITNESS. A. \$547,942.38.

Mr. HURLEY. Q. Are you able to state the amount of net income of the defendant Johnson for the calendar year 1936, according to your computation, based upon exhibits I have enumerated and the other evidence in the record?

Mr. THOMPSON. Same objection, your Honor.

The COURT. Overruled.

The WITNESS. A. The income I gave you, Mr. Hurley, was the net income, subject to tax after allowance of all statutory deductions.

By Mr. HURLEY:

Q. So that your previous answer was on the basis of net income rather than gross income?

A. That is right.

Q. Is that right?

A. That is right.

Q. Are you able to state the amount of tax still due by the defendant Johnson to the United States for the calendar year 1936, after allowing credit for the amount of tax shown on defendant's tax return for the year as shown by Government's Exhibit R-10, in evidence?

36 A. Yes, sir.

Q. And what is the total amount of tax still due the United States, according to your computation, for the year 1936?

Mr. THOMPSON. We object to the question on the ground that the proffered hypothetical question does not contain the essential elements of such a question; no proper foundation has been laid for the answer to the question by the witness.

The COURT. Overruled.

Mr. THOMPSON. And elements are being injected into the question which are not pertinent to the income for that year, and that elements are being omitted which are essential.

The COURT. Overruled.

Mr. HURLEY. Read the question.

(Question read by the reporter.)

The WITNESS. A. \$268,041.09.

37 Q. Now, Mr. Clifford, have you made a computation based on the list of exhibits which I have read to you and the other evidence in the case to determine the total amount of gross income for the Defendant Johnson for the year 1937?

A. I have for the net income.

Q. And are you able to state the amount of the net income of the Defendant Johnson for the calendar year 1937 according to your computation?

A. Yes, sir.

Q. What is that amount?

Mr. THOMPSON. For the same reasons we have assigned as to the similar question for 1936 we object to this question.

The COURT. Overruled.

The WITNESS. \$1,047,129.77

Mr. HURLEY. Q. Now, are you able to state that amount of the tax still due by the Defendant Johnson to the United States for the calendar year 1937, after allowing credit for the amount of tax shown on the Defendant's return for that year, Government's Exhibit R-11 in evidence?

A. Yes, sir.

38 Q. And what is the total amount of tax still due to the United States, according to your computation for the calendar year 1937?

Mr. THOMPSON. On the same ground that we objected to a similar question that was for 1936, we object to this one.

The COURT. Overruled.

The WITNESS. \$588,064.20.

Mr. HURLEY. Q. Mr. Clifford, have you made a computation based on the exhibits I have heretofore read to you and the other evidence in the case to determine the total amount of net income of the Defendant Johnson for the calendar year 1938?

A. I have.

Q. Are you able to state from that computation the amount of net income of the Defendant Johnson for the calendar year of 1938, according to your computation?

A. Yes, sir.

Q. What is that amount?

Mr. THOMPSON. On the same grounds we objected to a question of like import with respect to the year 1936, we object to this question.

The COURT. Overruled.

The WITNESS. \$935,353.80.

39 Mr. HURLEY. Q. Are you able to state from your computation the amount of tax still due by the Defendant Johnson to the United States for the calendar year 1938, after allowing credit for the amount of tax shown on Defendant's return for that year, being Government's Exhibit R-12 in evidence?

A. Yes, sir.

Q. What is the total amount of tax still due the United States according to your computation for the calendar year 1938?

Mr. THOMPSON. On the same ground that we objected to a similar question for the year 1936, we object to this one.

The COURT. Overruled.

The WITNESS. \$596,521.95.

Mr. HURLEY. Q. Have you made a computation based upon the exhibits which I have enumerated heretofore and also the other evidence to determine the total amount of the net income of the Defendant Johnson for the calendar year 1939?

A. I have.

40 Q. Are you able to state from that computation the amount of the net income of the Defendant Johnson for the calendar year 1939 according to your computation?

A. Yes, sir.

Q. What is that amount?

Mr. THOMPSON. On the same ground we have objected to a like question for the year 1936, we object to this question.

The COURT. Overruled.

The WITNESS. \$961,504.77.

Mr. HURLEY. Q. Are you able to state from that computation the amount of tax still due by the Defendant Johnson to the United States for the calendar year 1939, after allowing the credit for the amount of tax shown on Defendant's return for the year, being Government's Exhibit R-13 in evidence?

A. Yes, sir.

Q. What is the total amount of tax still due to the United States according to your computation for the calendar year 1939?

Mr. THOMPSON. On the same grounds we objected to a like question for 1936, we object to this question.

The COURT. Overruled.

41 The WITNESS. \$250,497.10.

Mr. HURLEY. You may cross-examine.

Cross-examination by Mr. THOMPSON:

Q. Mr. Clifford, in making your calculation, you are assuming that Mr. Johnson had on hand on December 31, 1932, a certain stated sum of money, is that right?

A. Yes, sir.

Q. What was that sum of money?

A. \$68,000.00.

Q. \$68,000.00 was all the cash he had on hand on that day, according to your assumption?

A. Per the testimony of Mr. Wilson.

Q. I say that is your assumption, is it?

A. Yes, sir.

Q. Did you ignore the ten thousand dollars that Mr. Wilson testified Mr. Johnson said he had in his bankroll at that time?

A. Yes, sir.

Q. You had before you at the time you were making these examinations, all Mr. Johnson's returns from 1932 on, and also the returns of Mr. Johnson for the prior years, didn't you?

42 A. I don't think I referred to them.

Q. You had them before you?

A. I don't know. I am not sure that I did. I have seen them. I don't know whether I had them before me.

Q. You had his '31 return?

A. I don't recall having '31.

Q. You had his '30 return?

A. I don't recall that.

Q. You had his '29 return?

A. I don't recall that.

Q. You had his '28 return?

A. I don't recall that.

Q. You had his '27 return, didn't you?

A. I don't recall any of those returns that I used in connection with this computation.

Q. I did not ask you whether you used them. You had them before you, didn't you?

A. I have seen them; yes. I have seen those returns.

Q. You have not seen any prior to 1937, have you?

A. You mean '27?

Q. '27?

A. No.

43 Q. Those have been destroyed by the Government, haven't they?

A. I don't know.

Q. Well, didn't you try to get the returns back of 1937, way back to the time Mr. Johnson commenced making his return?

A. I didn't.

Q. Well, did your chief, or someone in the department?

A. I don't know.

Q. Did you note from the returns prior to 1932 that Mr. Johnson had reported a very large income over a period of some ten years, each year?

A. The returns for '27 through '31, inclusive, show reasonable amounts, yes. I have never totalled them.

Q. You never made any effort to determine whether or not Mr. Johnson had disposed of all this income and had only \$65,000.00 left in 1931?

A. It was my understanding there he had disposed of it in '31.

Q. You understand that from what Mr. Wilson testified to?

A. Not from the revenue agent's report.

Q. From the revenue agent's report?

44 A. Yes, sir.

Q. Well, in making this calculation and these answers you have made here, you assume as true all of the evidence that has been offered by the prosecution?

A. I have taken the exhibit and the testimony of figures and have used those in computing the additional tax.

Q. And what amount did you compute as the amount that Mr. Johnson expended with respect to acquiring his interest in the property at 9730 South Western Avenue?

A. \$13,115.00 for the land, \$22,400.00 for the building.

Q. Did you ignore the fact that the \$22,400.00 for the building was paid by Mr. Skidmore, as Mr. Nadherny testified?

A. I took—

Q. Did you ignore that fact?

A. I did not accept it.

Q. All right.

A. That statement in my computation.

Q. You ignored it, then? You did not accept it?

45 A. I relied on Mr. Johnson's statement that he owned the property. He told me that he owned the property, yes, sir.

Q. So you are using your own testimony as part of the testimony on which you make your computation, are you?

A. No; I am using Mr. Johnson's statement.

Q. Mr. Johnson has made no statement in this hearing.

Mr. HURLEY. I object to counsel.

Mr. THOMPSON. Q. You are using your own testimony, are you, Mr. Clifford?

A. As to Mr. Johnson's statement he made to me, yes, sir.

Q. And you ignored the testimony of the architect that Mr. Skidmore paid him \$22,400.00?

A. Mr. Nadherny's statement was that he thought he was paying it as the agent for Mr. Johnson.

Q. You ignored his testimony that Mr. Skidmore paid the \$22,400.00?

Mr. HURLEY. I object. He has answered the question.

Mr. THOMPSON. I want an answer to some of these questions.

Mr. HURLEY. You will get them.

The COURT. What was the last answer?

46 (The last answer read as recorded.)

The COURT. Q. Can you tell us whether you did or did not ignore it?

A. I did.

Mr. THOMPSON. Q. You did ignore it?

A. Yes, sir; that is right.

Q. Did you ignore the testimony of Mr. Goldstein on cross-examination that Mr. Johnson acquired one-half of his property and that Mr. Skidmore acquired the other half of it?

A. Yes, sir.

Q. You ignored that?

A. Yes, sir.

Q. You took the top figure always in making a computation? Whatever the evidence showed against Mr. Johnson you took the top figure?

A. Not in all cases.

Q. Which case did you take other than the top figure?

A. I think Mr. Nadherny said he got the eight-hundred dollar fee. I did not include that in there.

Q. In connection with what?

A. Building the building at 9730.

47 Q. Well, he said Mr. Skidmore paid him that, didn't he?

A. Yes. He said Mr. Skidmore gave him the money.

Q. Now, what amount did you use in your calculations as the amount spent by Mr. Johnson in acquiring the Dells property?

A. Nineteen thousand.

Q. Nineteen thousand?

A. Yes, sir.

Q. You ignored the testimony of Mr. Goldstein on cross-examination that Mr. Skidmore acquired half of that, is that right?

Mr. HURLEY. I object to that. That is not the record, if the Court please. There is no such testimony in the record.

The COURT. You contend there is any such testimony as that?

Mr. THOMPSON. I contend there is. I contend he knew about Mr. Goldstein in '36, and the computations on that, he recognized Mr. Skidmore's handwriting, and it developed as a fact on cross-examination.

The COURT. Objection sustained.

Mr. THOMPSON. Q. What amount did you charge to
48 Mr. Johnson as the expenditures in acquiring the real estate now known as the Bon-Air property?

A. \$95,056.73.

Q. What were the items that made up that amount?

A. The original purchase at the Bon-Air proper, \$75,000.00; that which is represented by Exhibit A-32, \$7,600.00; Exhibit E-33, \$8,456.73; E-34, \$4,000.00.

Q. Is that all?

A. That is the Bon-Air property; yes, sir.

Q. What about the \$60,000.00 farm?

A. I show that as the Curran farm.

Q. You separated them?

A. That is a different subject.

Q. You included that, did you?

A. I beg your pardon?

Q. You included that as part of the Bon-Air, did you?

A. Yes. No; not as Bon-Air, but as part of the expenditures.

Q. All right. Did you include any other items out there in the Columbian Gardens whatever?

A. Yes. There is one for the Columbian Gardens Addition, of \$17,500.

49 Q. What else?

A. That is all.

Q. Did you include the \$7,500.00 deposit that Mr. Goldstein paid on the contract for the purchase of certain other property from the Evanston Bank in 1939?

A. That is part of the seventeen thousand, ten with the Chicago Title, seventy-five hundred with the Evanston Bank.

Q. You included that, did you?

A. Yes, sir.

Q. And you used those figures solely on the testimony of Mr. Goldstein, is that right?

A. No. I had the records of the Chicago Title and the testimony of the bank man as to amounts.

Q. As to amounts, and as to the identity of Mr. Johnson as the payer of the sums, you used Mr. Goldstein's testimony exclusively?

A. Yes, sir.

Q. What ground did you use as the expenditures of Mr. Johnson on the Division and Dearborn property?

A. In addition to those which are shown on his return as capital expenditures, I used the Air Comfort figure of fifteen thousand, three-hundred and ninety.

50 Q. Is that all you used?

A. In addition to those which are reflected on his return.

Q. What are shown on his returns as capital expenditures?

A. Classified as improvements and furnishings.

Q. Capital expenditure for acquiring of property, did you include that in these computations?

A. Yes, sir. You have the acquisition of the equity.

Q. How much did you charge to Mr. Johnson for that?

A. Sixteen thousand.

Q. You used Mr. Tavalin's estimate that it was somewhere in the neighborhood of sixteen thousand, is that right?

A. I think he said sixteen thousand. That was my recollection.

Q. At least you used whatever he said on the subject?

A. That is right.

Q. What did you use next?

A. The payment of the second mortgage.

51 Q. How much did you charge him for the payment of the second mortgage?

A. Forty-five thousand.

Q. You charged him the value plus the mortgage, forty-five thousand dollars?

A. Yes, sir.

Q. You gave no consideration to the testimony that he bought part of the notes at a discount, did you?

A. That was not clear. I had no way of telling what the amount was.

Q. So you took the top figure of forty-five thousand?

A. Took the top figure of forty-five thousand, yes, sir.

Q. What else did you add on there?

A. The payment of the first mortgage.

Q. How much did you charge him for that?

A. One-hundred and fifty thousand.

Q. Now, any other items?

A. The taxes, delinquent taxes, which were capitalized.

Q. You capitalized those, did you?

A. No. I took the figure of Mr. Brantman, as being the total of the delinquent taxes.

52 Q. Then, you used that as the capital investment and put them on there as an expenditure, is that right?

A. That is right.

Q. How much did you charge him for that?

A. \$15,205.48. That is only 75 percent of the total delinquent paid.

Q. Anything else?

A. Then the Lincoln Park improvements and furnishings. They are spread over a period of years.

Q. Those appear on the return, is that right?

A. With the exception of the Air Comfort expenditure.

Q. These apartment furnishings and so on, that all appears on his income-tax return, doesn't it?

A. Yes, sir.

Q. What items constitute the total that you calculated as the expenditures of Mr. Johnson for the year 1936?

A. Income taxes, payment of the first mortgage, Lincoln Park Building improvements and furnishings, the Thorndale and Glenwood improvements, or furnishings, and the purchase of the first piece of the Dells property.

52 Q. What is the total that you have of his expenditures for the year 1936?

A. \$84,820.47.

Q. And what was the total income Mr. Johnson reported for the year 1936?

A. After giving a credit total of—after giving a credit for depreciation, when he arrived at his total cash income, it was \$173,425.28. I am just adding that as I go along.

Q. In other words, according to your computation he spent \$84,000.00 in round figures in 1936 and reported an income of one-hundred and seventy thousand odd dollars?

A. That is right.

Q. What items did you use in your calculation of the expenditures for 1937?

A. Income taxes paid, Lincoln Park improvements, Thorndale-Glenwood furnishings, the second Dells property, purchase of Albany Park Bank Building, purchase of the land and construction at 9730 South Western, purchase of the Sunny Acres Farm, and the capital items, improvements which were put on the farm after he bought it, such personal expenses as were shown on the farm books, and the DuPage real estate.

54 Q. What was the last?

A. The DuPage farm that was adjacent to the Sunny Acres piece.

Q. \$16,050.00?

A. \$16,050.00.

Q. So you charged him with the cost price of the Albany Park Bank Building, did you?

A. Yes, sir.

Q. That was on Goldstein's testimony?

A. Yes, sir.

Q. And you charged him the full amount on 97th and Western that was spent by anybody, so far as any testimony is concerned?

A. Yes, sir.

Q. What was the total you charged him on 97th and Western?

A. \$35,515.00.

Q. The second payment on the Dells you charged him the amount Goldstein testified to, \$10,000.00?

A. No; nine.

Q. Nine thousand dollars?

A. Yes, sir.

Q. Now, this capital expenditure on farm, for 1937, that was one hundred and two thousand, I think you said?

A. \$223.

Q. That was for putting some new construction on the farm, for buying livestock and so on, I think he said. What were the items that made up the one-hundred and two thousand?

A. Building improvements, \$74,933.41; cattle, \$10,946.99; chickens, \$103.75; small tools, \$1,332.82; machinery and equipment, \$13,912.63, auto truck, \$583.50; harness, \$379.90.

Q. Is that all?

A. Makes a total of \$102,223.00.

Q. Did he sell any cattle that year?

A. Not that year.

Q. Did he sell any chickens?

A. I don't know.

Q. Well, you didn't take the cash receipts for the year and deduct them from disbursements, where they were applicable, did you?

A. Where they were applicable, yes. The next year when he sold cattle I did deduct them, deduct the amount, cost price of those cattle sold.

Q. What about the poultry and so on?

56 A. Chickens, that is shown in his profit and loss farm statement. In the loss he deducted, covering the operation of the farm, includes such figures.

Q. That is all shown on his income tax statement, isn't it?

A. Yes, sir.

Q. Now, 1938, you say he made capital expenditures—let us go back to '37. Strike out the question. Now, let us get to the income, let us get to the expenditures for 1938 now. What are the items of expenditures for 1938?

A. Income taxes for the year '37 and in '38 the Lincoln Park Building improvements, Thorndale-Glenwood furnishings, Sunny Acres capital item, personal expense, Sunny Acres, Bon-Air property purchase, Bon-Air Catering advances, and the loan to William R. Skidmore.

Q. Now, the capital item for 1938 of the farm? I think you said they were sixteen thousand and some odd dollars?

A. I subtracted from that the cost of the cattle sold in '38.

Q. What were the cattle items for '38?

57 A. In here it is, \$12,375.27, which is the total he purchased, and makes the cost of the cattle as giving him a credit for that.

Q. What were the items that make up this sixteen thousand dollars?

A. The items?

Q. Yes.

A. Cattle purchased, \$8,519.14; new construction and improvements, \$4,420.82; miscellaneous items, \$3,869.30.

Q. That makes the sixteen thousand and dollars, does it?

A. Yes, sir.

Q. Now, as to the expenses out at the Bon-Air, you assumed that he made all of those?

A. He told me he did.

58 Q. Using your own testimony there as the basis of that computation?

A. Yes, sir.

Q. Now, as to 1939, what were your capital expenditures that you say Mr. Johnson made?

A. Income taxes paid, Lincoln Park building improvements and furnishing, capital expenditures for the farm, advances to Bon Air, both as per the book record and those not on the books, purchase of the Curran farm, and the deposits in connection with the Columbian Garden real estate.

Q. What about the items of Bon Air shown by Exhibits E-42, 43, 44, and 45, ledger sheets of Albert Pick & Company, how much did you charge as expenditures of the Bon Air Catering Company for 1939?

A. You mean in connection with the Bon Air? You said the Bon Air Catering Company. I didn't charge anything on that. But I charged in my expenditure statement for Mr. Johnson, \$5,577.30. I eliminated all which were shown as having been paid by the Bon Air Catering Company.

Q. That is, you eliminated the items that were on the Bon Air Catering Company book—

A. Yes, sir.

59 Q. (Continuing.) Showing that they had been paid on these sheets, did you?

A. Yes, sir.

Q. Now, did you charge to Mr. Johnson the items the witness said Mr. Skidmore paid out there?

A. What witness?

Q. Well, the \$3,000 that Mr. Reedy said was given to him by—

Mr. HURLEY. Object, if the Court please. There is no evidence of that. None whatsoever.

The COURT. Do you contend there is such evidence, Judge Thompson?

Mr. THOMPSON. Yes, sir.

Mr. HURLEY. I would like to see it first.

The COURT. Who said it?

Mr. THOMPSON. Mr. Reedy, the plumber, who said that Mr. Wait handed him \$3,000 in his presence, on cross-examination, which Mr. Skidmore then handed him. That was the incident of the large old fashioned thousand dollar bill.

Mr. HURLEY. He testified about an old thousand dollar bill, but he didn't say anything about getting it from that source. He emphatically denied it, as I recall it.

60 The COURT. Well, you can ask him whether he included that \$3,000, if it was \$3,000, or a thousand, if it was.

Mr. THOMPSON. Q. You did include that \$3,000, anyway, did you, Mr. Clifford?

A. I included the amount that was shown on Mr. Reedy's statements.

Q. You also included all of Mr. Nadherny's architect fees, did you?

A. Yes, sir.

Q. Notwithstanding his testimony that Mr. Skidmore paid part of them?

A. Yes, sir.

Q. Now, let's get to this income. What items did you include as the income of Mr. Johnson for 1936?

A. The hundred dollar bills that came from the Lawndale Currency Exchange.

Q. All of them?

A. All of them.

Q. All the hundred dollar bills that came from the Lawndale Currency Exchange you said was Mr. Johnson's income in your calculations, is that right?

61 A. Yes, sir.

Q. All right.

A. The currency deposited by the Albany Park Safety Deposit—or, currency exchange—as evidenced by their deposit tickets with the Milwaukee Avenue National Bank and Mr. Marcus' testimony.

Q. That is, all of the deposits made by the Albany Park Currency Exchange—

A. Albany Park.

Q. (Continuing.) You included in Mr. Johnson's income, did you, for that year?

A. With the exception of those which were made on certain paydays which Mr. Marcus said he might have occasion to re-deposit. If there were any such days I didn't include those.

Q. Which ones did you not include?

A. For '36 there were none.

Q. All right. What other items did you add into Mr. Johnson's income for 1936?

A. Currency exchanged at the Northern Trust Company.

Q. That is, all the money that was exchanged over at the Northern Trust Company, according to this testimony, you put into Mr. Johnson as part of his income?

62 A. Yes, sir.

Q. All right.

A. Checks cashed at the Northern Trust Company.

Q. All those checks you assumed were Mr. Johnson's income?

A. Yes.

Q. All right.

A. Checks cashed at the Albany Park Currency Exchange.

Q. All checks cashed at the Albany Park Currency Exchange?

A. No, no. Gamblers' checks. Those marked on those sheets as gamblers' checks. The same way with the Northern Trust Company. Those that were shown as having been cashed by Mr. Jack Sommers. Gamblers' checks. Not all checks. Mr. Marcus had his records marked in such a way that those gamblers' checks could be distinguished from all the other checks. So I took only the gamblers' checks.

Q. How did you distinguish the gamblers' checks that were on Mr. Marcus' records?

A. By the marks which he had opposite those checks. J. S., M. D., No. 1, 2, 3, H. S., D. D., K. L.

Q. You calculated those all as gamblers' checks?

63 A. Yes.

Q. And you added all of them together and said that is Mr. Johnson's income, is that right?

A. Yes, sir.

Q. All right, go ahead.

A. Checks cashed at the Mid-City National Bank.

Q. By whom?

A. Mr. Creighton.

Q. All checks cashed by Mr. Creighton in 1936 at the Mid-City was Mr. Johnson's income?

A. Those to which Mr. Lawrason testified.

Q. All that whole string of checks that Mr. Lawrason testified about yesterday that he saw through this machine that had A. J. Creighton on the back of them for 1936 you added into Mr. Johnson's income, is that right?

A. Yes, sir.

Q. All right, go on.

A. That is all for '36.

Q. That is, that is the total, is it?

A. Yes, for '36.

Q. How much does that add up to?

A. \$533,216.94.

64 Q. And you gave him credit, did you, for what he returned as income taxes?

A. Yes, sir.

Q. What part of the income tax return did you give him credit for?

A. The gross income from gambling, \$148,300, in that year.

Q. You calculated that all this other income that you have been talking about was income from gambling, did you, for Mr. Johnson?

A. Yes, sir.

Q. In making this calculation you assumed that Mr. Johnson owned all of the gambling houses that have been named in this testimony, did you?

A. Yes, sir.

Q. And that all checks that were cashed by any of the defendants were checks representing income of Mr. Johnson?

A. Yes, sir.

Q. And that all currency exchanged by any of the defendants represented income of Mr. Johnson?

A. Yes, sir.

Q. That is the way you arrived at that figure, is it?

A. Yes, sir.

65 Q. Now, for 1937, what did you add up to make Mr. Johnson's income?

A. The same kind of items, hundred dollar bills, Lawndale—

Q. All hundred dollar bills at the Lawndale Currency Exchange?

A. No; which were shown as having been delivered to, I think it is Mr. Flanagan, Lawndale—

Q. Lawndale.

A. That is Mr. Mickovsky.

Q. Yes. Well, that is—all right. Wait a minute, now, on that. What you are adding into Mr. Johnson's income there is all the hundred dollar bills that this head office sent over to the Lawrence Avenue Currency Exchange?

A. No, this is Lawndale Currency Exchange.

Q. Or, Lawndale Currency Exchange?

A. Yes.

Q. That is—what was the name of that head office?

Mr. MILLER. Roosevelt Agency.

THE WITNESS. Roosevelt Loan and something.

Mr. THOMPSON. All right.

66 Q. You are adding into Mr. Johnson's income for '37 all of the hundred dollar bills that the Roosevelt Agency sent over to the Lawndale Agency, is that right?

A. Well, I understood the bank delivered them to the Lawndale agency. Not direct. Not through the Roosevelt. If that is what you mean; yes, sir.

Q. So that all the hundred dollar bills that were mentioned in that testimony you are adding to Mr. Johnson's income for 1937?

A. Yes, sir.

Q. All right. Let's go on from there.

A. Currency deposited by the Albany Park Currency Exchange.

Q. All currency deposited by the Albany Park Currency Exchange?

A. With the exception of those which were deposited on such days as could have been pay days, according to Mr. Marcus' testimony, and I eliminated those.

Q. Well, all right. How much did you charge him up for that?

A. For 1937 it was \$87,100.

Q. All right. What else?

A. Northern Trust Company, exchange of currency.

67 Q. All currency testified to here that was exchanged at the Northern Trust Company, is that right?

A. Yes, sir.

Q. Now, did you take the estimate of the gentleman who testified here as the amount that was exchanged there?

A. Yes, sir.

Q. What estimate did you take, 100,000 a year?

A. Yes, sir.

Q. You didn't pay any attention to the cross-examination where he said that it might have been 90,000 or 80,000, some other figure.

A. No, sir.

Q. All right, go ahead from there.

A. Checks cashed at the Albany Park Deposit and Exchange. Those were the gamblers' checks that were cashed there.

Q. That is, you mean by that all these J. D.'s and D. D.—

A. That is right.

Q. J. T.'s, and what have you?

A. That is right.

Q. How much did that amount to?

68 A. In that year it was \$623,690.

Q. You added all that in as what Mr. Johnson's income was that year, did you?

A. Yes, sir.

Q. All right, go on from there.

A. Checks cashed at the Mid-City by Mr. Creighton per Mr. Lawrason's testimony.

Q. That is, all of the checks that were found at the Mid-City which had the endorsement of Mr. Creighton you added that to Mr. Johnson's income?

A. Yes, sir.

Q. All right.

A. That is all for the year 1937.

Q. That makes a grand total of how much?

A. \$1,056,844.59.

Q. And you allowed him the credit, I suppose, for what he made gambling that year?

A. What he reported gambling.

Q. What he reported gambling.

A. Yes, sir.

Q. And you found that he still had a net income on which he hadn't reported of how much?

A. Of that nature, \$798,469.59.

69 Q. Did he have income of some other nature that he didn't report in that year?

A. Well, I didn't mean to infer that.

Q. You didn't mean that he skipped some more, did you?

A. No; I didn't mean that.

Q. So that in 1937 you added up all of the checks that were cashed by all of these defendants here as part of Mr. Johnson's income, is that right?

A. Whatever I have stated. I don't know whether I have got them all over there or not.

Q. Well, if you skipped any of them that was an oversight, wasn't it?

Mr. HURLEY. I object to that.

Mr. THOMPSON. Q. All of the cash exchanged by any of these defendants here, I will put it this time, was income of Mr. Johnson, is that right?

A. Yes, sir.

Q. And all of the hundred dollar bills that were delivered out of a bank down to the Lawndale Currency Exchange, you counted that in as Mr. Johnson's income?

A. Yes, sir.

70 Q. All right. Now, for 1938, what did you find that he made that year, what are the items composing the income as you calculated it?

A. Hundred dollar bills of the Lawndale, currency deposited, Albany Park, currency exchanged at the Northern Trust, checks cashed at the Albany Park, checks cashed at the Mid-City, checks deposited at the the North Shore, checks deposited at the Central National; those latter two by the Lawrence Avenue Currency Exchange.

71 Mr. THOMPSON. All right.

Q. Now, you charged all of the \$100 bills that were sent from the Federal Reserve bank here out to the Central—out to the Mid-City, and then by it sent over to the Lawrence Avenue, is that it?

A. The Mid-City had nothing to do with the Lawrence Avenue.

Mr. THOMPSON. Well, let's get it straightened out on these \$100 bills you charged to Mr. Johnson's income tax for 1938.

The WITNESS. The same as for '36 and '37, the Lawrence Avenue Currency Exchange. Mr. Flanagan, I think it was.

Mr. THOMPSON. Q. Where Mr. Flanagan cashed a few checks?

The WITNESS. A. This shows he got \$20,000 in \$100 bills alone.

Q. That shows he got \$20,000 in \$100 bills? You mean, your sheet of paper does?

A. It is the total of those which were taken from the exhibits.

Q. What you mean to say, Mr. Clifford, is that \$20,000
72 worth of \$100 bills were ordered out of the downtown banks by this Roosevelt Agency; is that right?

A. Well, there was a further statement that they got those for Mr. Flanagan. That is the basis of my figures.

Q. That is the basis of your figures, then; their statement was?

A. Yes, sir.

Mr. THOMPSON. All right.

Q. You are calculating all of those \$100 bills as being a part of Mr. Johnson's income for 1938; is that right?

A. Yes, sir.

Q. There was not anybody stated that he got the bills, was there?

A. No, not that I know of.

Mr. THOMPSON. All right.

Q. Now, what about the checks that you added to his income? Was that all of the checks cashed?

A. The Lawrence Avenue Currency Exchange.

Q. That is the Marcus exchange, isn't it?

A. Yes, sir.

Q. All checks cashed by J. D., M. O., and what have you, on them; is that right?

73 A. Yes, sir. Mid-City—that is Mr. Creighton.

Q. All of the checks cashed that bore the endorsement of A. J. Creighton were added to Mr. Johnson's income; is that right?

A. Yes, sir.

Mr. THOMPSON. All right.

The WITNESS. Gamblers' checks deposited at the North Shore and the Central National by the Lawrence Avenue.

Mr. THOMPSON. Q. How did you figure out that they were gamblers' checks deposited at the North Shore and the Central National?

The WITNESS. A. The total of the checks which cleared through Johnson's account on the Lawrence Avenue books, as per the testimony of Mr. Bagshaw.

Q. Through the Johnson account? Through the Johnson account?

A. Reserve for uncollected funds. That is Mr. Bagshaw's testimony.

Q. You are assuming that is Johnson's account?

A. Oh, no; he stated that.

Q. I know, but you are assuming——

A. \$1,100,000.

74 Q. You took that to be William R. Johnson, the defendant in this trial?

A. Yes.

Q. But Mr. Bagshaw didn't state that, did he?

A. No; I think not.

Q. He said it might be "Miss Johnson"?

A. No; I didn't understand him to say that. He might have. Mr. THOMPSON. All right.

The WITNESS. That \$1,100,000 was 74.87 percent of all checks that were deposited by the Lawrence Avenue Currency Exchange. I used that percentage in separating the gamblers' checks from the checks that were deposited at the two respective banks during both of those years. For '38 at the North Shore, they total \$66,305.29; at the Central National, the total is \$147,105.71, or a total of \$213,411.06. For '39, using that same——

Mr. THOMPSON. No, no. We are on '38. Let's get that all figured out.

The WITNESS. All right.

Mr. THOMPSON. Q. You took the total of this year, this
75 computation of yours of 74 point something, and calculated the amount that belonged to the gamblers; is that right?

A. Yes, sir.

Q. Then, anything that belonged to the gamblers, belonged to William R. Johnson; is that right?

A. Yes, sir.

Q. And then you put on this income tax?

A. It is included in my computation.

Q. Is that all of 1938?

A. Yes, sir.

Q. That makes a grand total of how much?

A. \$939,807.12.

Q. That includes all of the money that you think that all of these defendants either exchanged, or all of the money that was received in the cashing of checks by all of these defendants that operated these various gambling houses; is that right?

A. Whatever these records show; yes.

Q. Now then, 1939. What are the items that compose Mr. Johnson's income, according to your computation?

A. The checks cashed at the Washington Park Currency Exchange.

Q. Who ran that?

76 A. Mr. Snoddy.

Q. Who cashed the checks there?

A. Mr. Creighton.

Q. How much was that?

A. Well, he said "Forty to fifty thousand." I used forty. The currency exchange of the Northern Trust Company.

Q. The currency exchange of the Northern Trust Company?

A. Yes, sir.

Q. You used 100,000 for that figure, didn't you?

A. No; just forty.

Q. Just forty?

A. Yes, sir.

Q. Because that was only—

A. Because that is all Mr. Deming said.

Q. Four-tenths?

A. No; I took his figure.

Q. Forty thousand was the estimate?

A. Yes.

Q. You took the estimate?

A. Yes.

Mr. THOMPSON. All right.

77 The WITNESS. \$886,499.30, which is the balance of the \$1,100,000, which was not considered in 1938, of the gamblers' checks that went through Lawrence Avenue.

Q. That is, you took all of this reserve for—what is that account?

A. Reserve for uncollected funds.

Q. You took all of this reserve for uncollected funds which Mr. Bagshaw said was on the Lawrence Avenue books and you called that the William R. Johnson account, and you added that to his income for 1939, less what you had taken out for 1938; is that right?

A. Yes, sir.

Q. You called that part of William R. Johnson's income, did you?

A. Yes, sir.

Q. And what other items did you put in there?

A. That is all for 1939.

Q. What is the amount—what is the grand total?

A. \$966,499.30.

Q. Are there any other sources of information that you have used for the computation and calculations you have made,
78 other than the exhibits which were enumerated by Mr. Hurley in his questions to you?

A. Exhibits and the testimony in the event there were no exhibits.

Q. You just used the other evidence, did you?

A. Yes, sir.

Q. Do you know what parts of the rest of the evidence you used, other than those exhibits he enumerated?

The WITNESS. In connection with which statement: expenditures statement or tax computation? I can give you both if you want them.

Mr. THOMPSON. I would not have asked for them if I didn't want them.

The WITNESS. I beg pardon.

Mr. THOMPSON. Q. All expenditures?

The COURT. Take a short recess, ladies and gentlemen.

(A short recess was thereupon taken, after which the following proceedings were had.)

The COURT. Proceed.

Mr. THOMPSON. Q. Do you have the last question, Mr. Clifford?

79 The WITNESS. No; I do not.

Mr. THOMPSON. Read the last question or two, Mr. Reporter.

(Record read by the reporter.)

Mr. THOMPSON. All right.

Q. What evidence, other than the exhibits enumerated, did you use to make your calculations as to the expenditures for 1936?

A. None—Mr. Goldstein's testimony on the Dells.

Q. The testimony of William Goldstein?

A. Yes, sir.

Q. Is that all, other than the exhibits?

A. Yes.

Mr. THOMPSON. All right.

Q. What items of evidence or testimony did you use for expenditures for 1937, other than the exhibits enumerated?

A. Mr. Goldstein on the second part of the Dells; Mr. Goldstein on the bank building; Mr. Goldstein on the land at 9730 South Western; Mr. Nadermy on the building at 9730 Western; Mr. Goldstein on the DePage farm, the one adjoining Sunny Acres.

80 Q. Anything else for 1937? You used Goldstein on the Bon Air, didn't you?

A. That was '38.

Q. Didn't you put down anything for '37?

A. Not according to the dope I got.

Q. Goldstein on the Dells for '37—

The WITNESS. I mentioned that.

Mr. THOMPSON. All right.

Q. Then, excepting as to the one statement of Nadherny about the building at 9730 Western, all of the rest is Goldstein plus the exhibits; is that right?

A. Yes, sir.

Mr. THOMPSON. All right.

Q. Now, then, for 1938, what did you use in addition to the exhibits?

A. The statement of Mr. Johnson about the loans from Skidmore—

Mr. THOMPSON. Let's get what is in evidence.

Q. You used your own account of your interview with Mr. Johnson; is that right?

A. This statement is in evidence.

Q. Oh, you mean—

A. The statement of March 27th.

Q. That written statement read into evidence?

81 A. That is right.

Mr. THOMPSON. All right.

The WITNESS. And Mr. Goldstein on Bon Air.

Mr. THOMPSON. All right.

Q. Besides that written statement read into evidence, and your testimony of Mr. Johnson's statement to you, and Goldstein. That is all, isn't it, besides the exhibits?

A. My testimony on the farm capital expenditures. That applies to '37, also.

82 Q. All right now, '38 we are talking about now.

A. Yes. I overlooked it in '37.

Q. Now, '39, what evidence or testimony did you use in addition to the exhibits enumerated by Mr. Hurley in his question?

A. The testimony of Mr. Goldstein on the Curran farm, and on the Columbian Gardens. I think the rest of them are covered by exhibits.

Q. Just Goldstein and the exhibits, plus your testimony, and what Mr. Johnson told you in an interview?

A. I don't think that applies to '39.

Q. You don't think that applies to '39?

A. No.

Q. Just Goldstein and the exhibits then, in '39?

A. Yes.

Q. Now, as to the income for 1936, what if anything did you use to make your calculations other than the exhibits enumerated by Mr. Hurley?

A. The testimony of Mr. Denning.

Q. Mr. Denning?

A. The Northern Trust Company man.

Q. Oh, yes. The currency exchange?

A. Yes.

83 Q. Anything else?

A. Mr. Lawrason's testimony, and that is evidenced by the record also.

Q. That is for 1936. All right, anything else?

A. Everything else is per exhibit.

Q. Now, what did you use as the testimony to connect the currency exchanged at the Northern Trust Company with the Defendant William R. Johnson?

A. I do not know of any specific—specific testimony of any one person. It is just the general testimony as to the ownership.

Q. Oh, you determined that Mr. Johnson was the owner of whatever produced this cash, is that right?

A. This computation is based upon that fact.

Q. Upon that assumption?

A. On that assumption.

Q. What testimony in this record did you use in your calculations to determine that the checks cashed by Mr. A. J. Creighton were part of the income of William R. Johnson in 1936?

A. I could give you the same answer for that also that that is general testimony.

84 Q. You assumed that all checks cashed by A. J. Creighton in 1936 were income of William R. Johnson, is that right?

A. That is right.

Q. And you made that assumption from the general testimony in this record?

(No audible answer.)

Q. Can you point to any particular item or testimony that you used as the basis for that assumption?

A. No; I can't right now.

Q. Now, what evidence did you use in the evidence as the basis for your calculation that the checks cashed in 1936 at the Northern Trust Company by Mr. Jack Sommers were part of the income of Mr. William R. Johnson?

A. I think I could give you the same answer to that one also.

Q. Can you point to any particular bit of testimony in this record which you used as the basis for that assumption?

A. No particular bit; no, sir.

Q. What was the basis for your assumption that the checks cashed at the Albany Park Currency Exchange in 1936 were part of the income of William R. Johnson?

85 A. I would give you the same answer.

Q. The same answer?

A. Yes.

Q. And if I asked you with respect to each of the items that you used in calculating the income of William R. Johnson for the year 1937, 1938, and 1939, respectively, you would give me the same answer in substance, would you?

A. With the exception of '39, the testimony of the two people at the Lawrence Avenue Currency Exchange, Mrs. Koop, and the janitor who saw Mr. Johnson in there dealing with Mr. Brown. Otherwise it would be just the same.

Q. You then assumed in making your calculations for 1939 that two witnesses have testified that Mr. Johnson dealt with Mr. Brown in 1939 have you?

A. That would be one specific instance I could recall in that testimony.

Q. You are assuming those two witnesses testified that Mr. Johnson had dealings with the Lawrence Avenue Currency Exchange, are you?

A. Yes, sir.

86 Q. Do you know what particular dealings you are considering in the basis of your assumption with respect to transactions with the Lawrence Avenue Currency Exchange that Mr. Johnson had dealings with him?

A. I do not know the nature of the dealings from the testimony.

Q. All right, your assumption then of all these facts with respect to these various items which you have added together to make up Mr. Johnson's income taxes, or income for these four years, are as you have stated them, are they, the general record without any ability to state any specific thing, excepting this one thing you have last stated, is that right?

A. I don't recall any right now.

Q. Can you tell me on what basis you assumed that the cash, checks cashed and the currency received by John Flanagan at the Lawndale Currency Exchange was the property and income of William R. Johnson?

A. Just general ownership of all the places.

Q. Just general ownership of all the places?

A. Yes, uh-huh; yes, sir.

Q. Just what places did you assume that Mr. Johnson owned in making your calculations?

87 A. Quite a number in the testimony. I don't just recall all the names.

Q. Did you assume he owned the Southland Club?

A. Yes, sir.

Q. Did you assume that he owned the one at 119th and Vincennes?

A. Yes, sir.

Q. You assumed that he owned the Select Club?

A. Yes, sir.

Q. And the Harlem Club?

A. The Harlem Stables, yes.

Q. What about the Harlem Club, did you assume he owned that one?

A. I don't know about that one.

Q. What?

A. I don't know about that one. I only know the Harlem Stables.

Q. You did not take any consideration of the Harlem Club?

A. No. I don't remember of ever having heard of that.

Q. Have you read the indictment in this case?

A. I have. I have forgotten that part of it.

Q. You do not know about this Harlem Club that
88 was out in Maywood, there?

A. I do not know that.

Q. The 4020 Club, you included that, did you, as one owned by Mr. Johnson?

A. Yes, sir.

Q. And the bookie up on School Street, did you include that as the property of Mr. Johnson?

A. I did not recall that one.

Q. The Mayfair Club?

A. I do not recall that one.

Q. The Northland Club?

A. The Northland.

Q. You included that, did you?

A. Yes, sir. That is if there was any money came from that in these figures I would have included it. I have nothing to show that any money came from that Northland.

Q. Who ran the Northland Club?

A. I don't know.

Q. Did it ever run?

A. I don't know. There was some party here testified about doing some work up there. That is all I know about the Northland.

Q. Some carpenters worked up there?

89 A. That is all I heard about it.

Q. That is all you know about it?

A. Yes, sir.

Q. What about the Provise Club? Did you include that as one owned by Mr. Johnson?

A. I do not know anything about that either.

Q. What about the Lincoln Tavern, did you include that in Mr. Johnson's property?

A. During the year of operation, whatever year it was.

Q. What?

A. If they operated in '36, I do not know when it operated.

Q. I mean in these four years we are talking about now?

A. If it operated; yes, sir.

Q. Well, did it operate in the four years?

A. I don't know, I don't know.

Q. You included the Harlem Stables, I think you said, as one of the properties owned by Mr. Johnson, is that right?

A. There was some checks, records at the Albany Park, showing that checks came from the Harlem Stables. Those checks would be included in r.y computation.

90 Q. As Mr. Johnson's income?

A. Yes.

Q. Did you assume in your calculations that Mr. Johnson owned the Club Moderne up here by Glencoe or Highland Park somewhere?

A. I do not know about that one.

Q. Sir?

A. I do not know about that one.

Q. Did you assume that Mr. Johnson was the sole owner of the Bon-Air Country Club in your calculations?

A. I took that from what he told me, not an assumption there.

Q. You did assume it in your calculations?

A. Yes.

Q. Based on your own recollection of what he told you?

A. That is right.

Q. Did you assume that Mr. Johnson owned the Service Bureau, or whatever you may call it, from which the service was sent out to bookies over this telephone system that was talked about here in evidence?

A. I am not familiar with that testimony.

91 Q. You did not assume that he owned that network of telephones then?

A. I did not have any assumption at all on that. I don't know.

Q. Can you point out one item of testimony on which you based your assumption that Mr. Johnson owned the 4020 Club?

A. I can't recall any now.

Q. Can you point to a single item of testimony on which you based your assumption that Mr. Johnson owned the Southland Club?

A. No, I can't think of one.

Q. All you would answer as to each of these clubs, if I asked you, would be that you just took the general testimony, is that right?

A. There was one lady said he had something to do with the Horse-Shoe, raising the limit out at the Horse-Shoe. I can't think of that one.

Q. And you took—

A. That would be one specific item I can now remember.

Q. You used that as a basis for your calculation that Mr. Johnson owned the Horse-Shoe Club, because this woman said she
92 talked to him about raising the limit, is that right?

A. I wouldn't say that I used that as the reason.

Q. Did you give any consideration of her statement about raising the limit?

A. No. I don't think that I did give any specific consideration to it.

Q. Can you name now one single item of testimony that was not included in these exhibits that were enumerated by Mr. Hurley in his question as the basis of your assumption that Mr. Johnson owned any of these gambling clubs?

A. Nothing specific, just general.

Q. Now, Mr. Clifford, assuming that Mr. Johnson did not own these gambling houses, he has returned all of the taxable income that he had for the year 1936, hasn't he?

A. No. You got your expenditure statement which showed he spent more than he reported.

Q. In 1936?

A. That is only one year out of the whole business.

Q. You do not lump people's income when you check their return for any particular year, do you?

93 A. I take into consideration, I try to take into consideration in making a net worth statement as many years as I can get.

Q. All right, let us go back, 1937, 1938, and 1939 had not happened when Mr. Johnson reported his income for 1936, had it?

A. No, sir.

Q. All right now, we are in 1936. You can go clear back to the beginning of time if you want to from there and then will you say that Mr. Johnson, according to your calculations had any taxable income for 1936 which he had not reported, if you eliminate the testimony that he owned these gambling houses?

A. Not for '36.

Q. Sir?

A. Not for '36.

Q. Now, for the year 1937, eliminating the assumption that he owned these gambling houses, have you, can you calculate that he had not reported all of the income that he had earned up to that time?

A. In that year?

Q. No; in 1937 did he report all of the income that he had
94 earned, assuming he did not own these gambling houses?

A. In that year he reported an income of two hundred and sixty four thousand, and he spent four hundred and sixty five.

Q. That is right. Assuming he did spend all of that.

A. That would assume he did not report the full income.

Q. All right, we will assume for my question now that he spent four hundred and sixty five thousand dollars in 1937.

A. Then the income he reported was not sufficient to take care of that income in that year.

Q. What about the excess income that he reported for 1936, '35, '34, '33, and '32, and the seventy-eight thousand dollars he had in his possession in '31?

A. For my figures, they do not include any personal expenses at all, he would have an excess.

Q. In other words, he would have more money accumulated by 1937 than he spent in 1937, wouldn't he?

A. Assuming that he had no personal expenses, no personal ex-
penditures. I do not have any for him; but if he had those,
95 then based on your assumption he could not have had an excess.

Q. Well, if he lived with his mother, it didn't cost him anything to live, he would get along all right, would he?

A. Yes.

Q. How much short would he be?

A. It depends on what his average per year was, if he had to pay for himself—

Q. Has he got anything left to live on after you take out the expenditures for 1937?

A. According to my figure he would have about five thousand dollars a year to live on.

Q. He would have about five thousand dollars a year to live on?

A. Over that period

Q. Yes. He would have to skimp to get by on that, you think?

A. I think he would.

Q. Even if he was living at home with his mother?

A. Yes.

Q. If the property he owned was paid for?

A. Yes.

Q. Now, 1938, assuming he did not own any gambling houses, how much short would he be?

96 A. Four hundred thousand.

Q. Four hundred thousand?

A. Dollars.

Q. That is if you take all of the reported income from 1931 down to 1938, at what you say he had in the books, seventy-eight thousand, then deducted expenditures that you have calculated up to and including 1938, he would be short four hundred thousand, would he?

A. Yes, sir.

97 Q. That is, without anything to do with these gambling houses?

A. That is right.

Q. And that, of course, is assuming that he bought the Albany Park bank building and paid for it, bought all of 97th and Western and paid for it, bought all of the Dells property and paid for it, bought all the Bon Air property and paid for it?

A. Yes, sir.

Q. And that all depends on Mr. Goldstein's testimony, doesn't it?

A. Not entirely. Mr. Johnson influenced me by his testimony to me.

Q. Well, you mean your recollection of what he told you?

A. My record of what he told me.

Q. Your recollection of what he told you?

A. My record of what he told me.

Q. Let me see your record of what he told you.

A. I don't think you can read that. That is it (handing).

Q. That is it, is it?

A. Yes, sir.

Q. What is this, Gregg or Pitman?

98 A. Gregg.

Q. Now, when did you make that shorthand notation in that little book?

A. My recollection is I made it the noon after I finished talking to Mr. Johnson.

Q. So that your recollection is that you recollected at noon after you talked to Mr. Johnson what he had said to you in the morning and you then put it down in this little book in shorthand, is that right?

A. Yes, sir.

Q. Then we come to 1939. How far did he get by that time, assuming he did not own any of these gambling houses, taking all the rest of your assumptions?

A. On the basis of the expenditures per this statement, he was \$78,000 in the red—shy, rather.

Q. \$78,000 shy?

A. He spent \$347,000 and reported only \$268,000.

Q. So he needed how much money to come out even by 1939?

A. Altogether \$475,000.

Q. And that is still assuming that he bought and paid for
99 all these properties that Goldstein testified about?

A. Yes, sir.

Q. How much was Mr. Johnson's excess income prior to the end of 1931 as shown by his income tax return from way back in 1921 or 1922?

A. As far as my information goes he had—didn't have an excess, he was in the hole.

Q. Well, you mean by that that according to this statement of Mr. Wilson, he had \$68,000—or, \$78,000 in the box; didn't say how much he had under the back stoop of the house, did he?

A. I don't know.

Q. Or buried out in the garden?

A. I don't know that.

Q. So you are assuming that he had come up to the beginning of 1931 dead broke, accumulated \$78,000 in 1931, and that is all he had?

A. No, he spent a lot of money, according to the records, during '31. I don't know whether he was broke at the beginning of '31 or not.

Q. What did he spend in '31 according to the records?

A. I don't remember. I wasn't familiar with all the details.

100 Q. Well, he bought the building out there at 4020 Ogden avenue, didn't he, paid \$8,750 for it, and assumed a mortgage of \$8,750, that is \$17,500, isn't it?

A. I don't know about '31.

Q. That is "the" lot of money he spent in '31?

A. I don't know the details.

Q. A couple of years prior to that, in 1929, he bought another old shack down on Pulaski or Crawford, didn't he, and paid something like \$20,000 for it?

A. I don't know.

Q. Well, isn't that what you are talking about when you talk about his big expenditures prior to '31?

A. I don't know the nature of the expenditures during '31, but he spent a big pile of money in '31, according to the records.

Q. Whose records?

A. Internal Revenue Department. I don't know the nature of them.

Q. Well, no records produced here, is it?

A. I don't know.

101 Q. You are not taking that into consideration, anything that is not in evidence here, are you, Mr. Clifford?

A. Not in making this expenditure statement. I am just doing that in answering your question.

Q. Well, I know—

A. This is based only on testimony or evidence.

Q. And you have already testified to all of that?

A. Yes, sir.

Q. But I am getting into this business prior to 1931, now, to test this \$78,000 business you are talking about. Now, did you calculate his income from his returns on file for the ten years prior to 1932?

A. No, sir.

Mr. THOMPSON. All right. That is all. We move the Court to strike from the record the calculations of the witness on the ground there is no proper foundation laid for the calculations and that it appears now that the calculations were made by taking into consideration improper elements and by omitting from consideration elements which should have been considered; and that
102 the testimony of the witness is an invasion of the province of the jury in weighing the testimony of witnesses in this record, evidence in the record; and that there is no proof of any character justifying his assumption that many of the items he has testified to are the income of the defendant William R. Johnson.

THE COURT. The motion will be denied.

Re direct examination by Mr. HURLEY:

Q. Did you, from the calculations that have been inquired about here, Mr. Clifford, arrive at what the defendant William R. Johnson—what he had on January 1, 1940?

A. According to this statement he would have had nothing.

Mr. HURLEY. I offer in evidence at this time, if the Court please, Government's Exhibit X-252, for identification.

Mr. THOMPSON. We have no objection to that.

The COURT. What did he say?

Mr. HURLEY. "We have no objection to that."

The COURT. It may be received.

(Said exhibit, so offered and received in evidence, was thereupon marked "Government's Exhibit X-252," and is in words and figures as follows, to-wit:)

103 Mr. HURLEY. That is all.

(Witness excused.)

Mr. HURLEY. Your Honor, we have but one more short witness, and he is not here, and then we will close.

The COURT. You just have one witness?

Mr. HURLEY. One more. He is not available right now.

The COURT. When will he be available?

Mr. HURLEY. Tomorrow morning, first thing.

The COURT. If it is all right with them it is all right with me.

Mr. HURLEY. They have no objection.

The COURT. We will recess at this time, ladies and gentlemen, until 10:00 o'clock tomorrow morning.

Mr. THOMPSON. If the Court please, obviously, at the conclusion of the Government's case, which I understand is to be the first thing in the morning, we shall move for certain relief, and I propose to argue to the Court law based on the authorities in this memorandum, which I thought the Court might like to have over night, and expedite matters, copy of which we have delivered to the Government counsel. (Handing paper to the Court.)

104 (Whereupon an adjournment was taken until 10:00 o'clock A. M., Wednesday, September 25, 1940.)

105 UNITED STATES OF AMERICA

vs.

WILLIAM R. JOHNSON ET AL.

Before Judge BARNES and JURY

Wednesday, September 25, 1940,

10:00 o'clock A. M.

Court met pursuant to adjournment.

Present:

Mr. William J. Campbell,

Mr. E. Riley Campbell,

Mr. Hurley,

Mr. Plunkett,

Mr. Miller,

Mr. Thompson,

Mr. Hess,

Mr. Callaghan.

The COURT. Proceed, gentlemen.

Mr. THOMPSON. If the Court please in checking the record, I find I should like to ask Mr. Clifford a few more questions to get some figures we didn't get as a basis of his calculations.

The COURT. Very well.

106 FRANK J. CLIFFORD, called as a witness on behalf of the Government, having been previously duly sworn, was examined and testified further as follows:

Cross-examination (continued) by Mr. THOMPSON:

Q. Mr. Clifford, will you please give us, in order, the amount of the net cash income of Mr. Johnson, based on his income tax returns for each year, beginning with 1932?

Mr. HURLEY. If the Court please, that is in the record.

The COURT. "32," he said.

Mr. THOMPSON. I said "beginning with 1932". What do you mean, it is in the record?

Mr. HURLEY. As I understand it, that was covered yesterday.

Mr. THOMPSON. No. That is just the reason I wanted his figures. They do not gibe with ours. Therefore, I want to see where the error is.

The COURT. He testified to it yesterday?

Mr. THOMPSON. He testified as to parts of the year, then he gave a total, which was not the same. I think it was an error.

107 I do not think there is anything wrong with it. That is the reason I want to get it straight. It may be our error.

The COURT. Well, go ahead. Overruled.

The WITNESS. A. For the year 1932, the first figure is \$70,677.54.

Mr. THOMPSON. Q. That is the net cash income of Mr. Johnson for the year 1932, as reported by him, isn't it?

A. I would add to that, the depreciation which I allowed.

Mr. THOMPSON. Yes. That is right.

Q. The net cash income available for expenditures?

A. That is right; \$1,817.41. That is added to the \$70,000 figure.

Mr. THOMPSON. All right. Thank you.

The WITNESS. And in that year he realized from the sale of an investment which is not included in the other figure, the amount of \$289.45, and there was an error on the return, which reduced this figure, \$1,415.56, which brought the net to \$72,368.84.

Mr. THOMPSON. All right.

Q. Now, then, the 1933 figure.

The WITNESS. A. 1933, the amount of net shown on the
108 return was \$74,667.81. Adding the depreciation of \$1,817.41, and an error of \$2,097.13, brings the total—I will have to subtract it, because I have carried it forward. That brings it to about \$78,572.35. 1934, the figure reported was \$116,214.53. Adding the depreciation of \$9,007.35, plus an adjustment of \$16,129.36, makes a total of \$141,451.24. 1935, the amount was \$57,878.85, plus the depreciation of \$9,942.68, plus a small adjustment of \$605.39, making a total of \$66,426.95. I am adding these backwards as I go, so I may make an error. 1936, \$161,892.74, plus \$10,410.77 depreciation adjustment, plus a small mechanical adjustment of \$1,132.70, making a total of \$173,436.21.

Mr. THOMPSON. All right.

The WITNESS. '37, it is \$248,660.15 for the return, adding the depreciation of \$15,354.95, makes \$264,015.13. 1938, \$101,946.68, plus depreciation adjustment of \$19,028.47, making a total of \$121,075.15. 1939, \$251,715.47, plus \$17,170.51, makes a total of \$268,885.98.

109 Mr. THOMPSON. Q. Now, Mr. Clifford, in making those computations, did you allow any depreciation for the building at 9730 South Western Avenue?

A. I don't know whether that was in the return or not; it was not in the '37.

Q. It was not in the return, and you have assumed that he was the owner, and you did not make—

A. It is not in these computations.

Q. No; it is not in those computations, I understand, but in your computation as to Mr. Johnson's taxable income, based on the assumptions from your conception of the evidence in the record, you did not make any allowance to him for depreciation on 9730 South Western avenue, did you?

A. No; I gave him that which was on the return, plus a small adjustment.

Mr. THOMPSON. Yes, sir.

Q. And the adjustment you have been testifying to is what the returns actually show, of course?

A. Yes, sir.

Q. What I am getting at on this second question is making the assumptions that you did in connection with your answers to what

Mr. Johnson's return should have been for the various
110 years. In making that assumption, did you deduct any depreciation which would, on your theory, have been allowable to Mr. Johnson on 9730 South Western avenue?

A. No, sir.

Q. And did you make any deduction for depreciation which might have been allowable to Mr. Johnson on the theory that he owned the Dells property, in calculating his income on the assumptions you made?

A. No, sir.

Q. You didn't allow any deductions as to the Bon Air property, did you, in those calculations?

A. No, sir.

Q. Nor did you allow any payment of taxes for either of these three properties that I have mentioned?

A. I had no taxes or any books on those.

Q. So you made no allowance for taxes paid. Assuming he owned these properties, he would have been allowed a deduction for whatever taxes he paid on them, would he not?

A. Yes, sir.

Q. You made no such allowance or estimate of allowance?

111 A. Not in this computation.

Mr. THOMPSON. All right.

Q. I think, Mr. Clifford, I asked you the details of expenditures for 1936, but I seem to have omitted asking you for 1937. What

are the details of your expenditures, mentioning the items and the same in gross?

A. Income tax, \$78,550.70.—

Mr. THOMPSON. All right.

A. (Continuing.) Lincoln Park building improvements, \$16,274; Albany Park Furnishings, \$102.75; the Dells purchase, \$9,000; Albany Park bank building, \$59,887.95; 9730 South Western avenue, land, \$13,115; building, 9730 South Western avenue, \$22,400; Sunny Acres farm, \$145,000; Sunny Acres farm capital items, \$102,223; personal items incurred at the farm, \$3,238.14; that DuPage County real estate, \$16,050.

Mr. THOMPSON. All right.

Q. Now, what are the totals for 1937?

A. \$465,840.64.

Q. Now, for 1938, the same, please.

A. Tax, \$128,399.72. Lincoln Park building improvements, \$3,680.09; furnishings, Lincoln Park building, \$106.09; farm capital items, \$12,375.27; personal items, \$3,002.49; Bon Air land purchase, \$95,056.73; the advances to the Bon Air Catering Company, \$273,540.93; loan, William R. Skidmore, \$37,000. The total was \$553,561.32.

Q. Now, will you please break down the land purchased for Bon Air? What were those items there, please?

A. The original purchase \$75,000; exhibit E-32, called the Flynn property, \$7,600; Exhibit 33, the Toche property, \$8,456.73; Exhibit 34, called the gas station, \$4,000.

Mr. THOMPSON. All right.

Q. 1939, please.

A. Tax, \$34,530.94. Lincoln Park building improvements, \$266.08; furnishings, \$2,090.19; farm capital items, \$1,087.04; the Bon Air advances, cost of improvements, \$228,195.07; the Curran farm, \$63,800; and the advances in connection with Columbian Gardens real estate, \$17,500. The total is \$347,469.32.

113 Q. This Columbian Gardens, just how is that breakdown; what are the items that comprise the \$17,500?

A. \$10,000 in escrow with Chicago Title; \$7,500 in the Evanston bank.

Q. Those are two separate transactions, then, are they?

A. I don't know whether they are both on the same one, or on two different ones, but they are two different deposits.

Q. Seventy-five hundred deposited on a contract of purchase from the Evanston bank, and the \$10,000 deposited on a similar contract in escrow at the Chicago Title & Trust Company; is that what you have?

A. Yes.

Mr. THOMPSON. All right. Just one question on this \$45,000 second mortgage on the Division and Dearborn property, otherwise called the Lincoln Park building.

Q. I think you said you charged Mr. Johnson with an expenditure in the aggregate of \$45,000 on that transaction?

A. Yes, sir.

114 Q. What credit, if any, did you give Mr. Johnson in relation to that expenditure on that second mortgage for this payment to him? Apparently it is a debit on Government's Exhibit E-9 of \$2,250.

A. I didn't give him any credit for that.

Q. Didn't you understand that to be some payment by him on this indebtedness of \$45,000, which reduced the amount of the notes that Mr. Johnson held at that time, \$10,000 of notes he then held, by \$2,250?

A. If that is what it was, it would tend to reduce that, yes.

Q. At least, you did not take that into consideration?

A. No, sir.

Q. Now, Mr. Clifford, you assume in your computation of the proper taxable income of Mr. Johnson, his ownership of all these gambling houses. Did you give him credit for the \$7,200 of rent that he received on 402 1/2 Ogden and 3121 Crawford, which are returned on his income tax returns?

A. I didn't take that out. The depreciation is taken out and he is given credit for that.

Q. The depreciation is taken out?

115 A. Yes. Not the other.

Q. So that if Mr. Johnson was the owner of that gambling house, and paid himself \$7,200 rent, it would be properly taken out?

A. That adjustment would be proper.

Q. And the same thing is true of Division and Dearborn. If he was the owner of that gambling house and paid himself rent on that gambling house, that would be properly deductible?

A. The same adjustment, yes.

Q. You didn't make any, though?

A. No.

Q. In a like situation, if he actually owned gambling houses and real estate which he does not, in fact, own, according to his returns, then it would not be taxable on the so-called rent that he received?

A. That is right.

116 Q. Now, when you were speaking of the gross income of Mr. Johnson under your assumed basis of calculation, what do you understand the gross income to be?

A. Well, in this case the gross income would be before deduction of any operating expenses; but the figure that I have is supposedly after the deduction for such operating expenses.

Q. Well, you are using, I suppose, as the basis of your definition of gross income Section 22. I believe it is, of the Internal Revenue Code?

A. I do not recall the section. It is defined there.

Q. Well, how do you reconcile the inclusion in that matter of gross income under that definition of the statute this mere exchange of currency down at the Northern Trust Company, for instance, where five thousand dollars of currency is brought in and exchanged for another five thousand of currency?

A. Well, the testimony was in the majority of the exchanges in the cashing of checks—

Q. No, I am not talking about cashing of checks.

A. Well, the exchanging of money that large bills were paid on.

117 Q. Yes?

A. They were also some small ones, but the testimony is that these wages, which is the big operating expense, were paid the night before.

Q. Yes?

A. And this was in excess, which could have been used for any purpose other than that, personal or otherwise.

Q. I say, that is the deduction that you made from the testimony in the record, in arriving at your basis for including that exchange of currency as income?

A. The deduction I took, there was no evidence to show it was used in connection with any gambling expense at that time.

Q. Well, the fact he brought in five twenty-dollar bills and got back one one-hundred bill, would not change the amount of money he had when he came into the bank, would it?

(No audible answer.)

Q. He had the same amount of money when he went out of the bank as he had when he went into the bank?

A. Yes, sir.

118 Q. Just a few more items. What did you find to be the expenditures as shown by your computations of Mr. Johnson for the year 1935?

A. Income taxes, \$41,373.56; payment of the first mortgage, \$75,000.00; improvements to Lincoln Park, \$2,059.91; furnishings, \$3,453.81; Thorndale and Glenwood, \$326.00.

Q. Making a total?

A. \$122,213.28.

Q. And for '34, please?

A. Taxes of \$27,993.00; Lincoln Park Building equity purchase, \$16,000.00; payment of the first mortgage, \$25,000.00; the delinquent taxes capitalized, \$16,205.48; improvements, \$6,030.05; furnishings, \$3,076.40; Thorndale and Glenwood furnishings, \$730.22, making a total of \$94,035.15.

Q. '33?

A. In '33 is the taxes paid, of \$8,610.10; and the balance of the purchase of the second mortgage, \$38,000.00; making a total of \$46,610.10.

Q. '32?

A. Just the taxes paid, \$8,841.11; and the second mortgage, original purchase of \$7,000.00; making a total of \$15,841.11.

119 Q. You have no expenditures prior to that, do you, in your computations?

A. No, sir.

Q. What was the base you started with now for 1932, January 1st?

A. \$68,000.00.

Q. That is what I thought you said. Is that what you used as the testimony of Mr. Wilson, as the base to start with, \$68,000.00?

Yes, sir.

Mr. THOMPSON. Very well. That is all, Mr. Clifford.

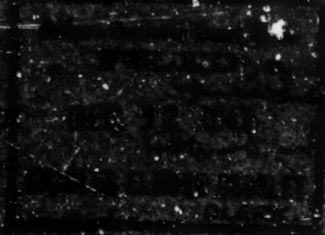
(Witness excused.)

JOHN P. BARNES. *Judge.*

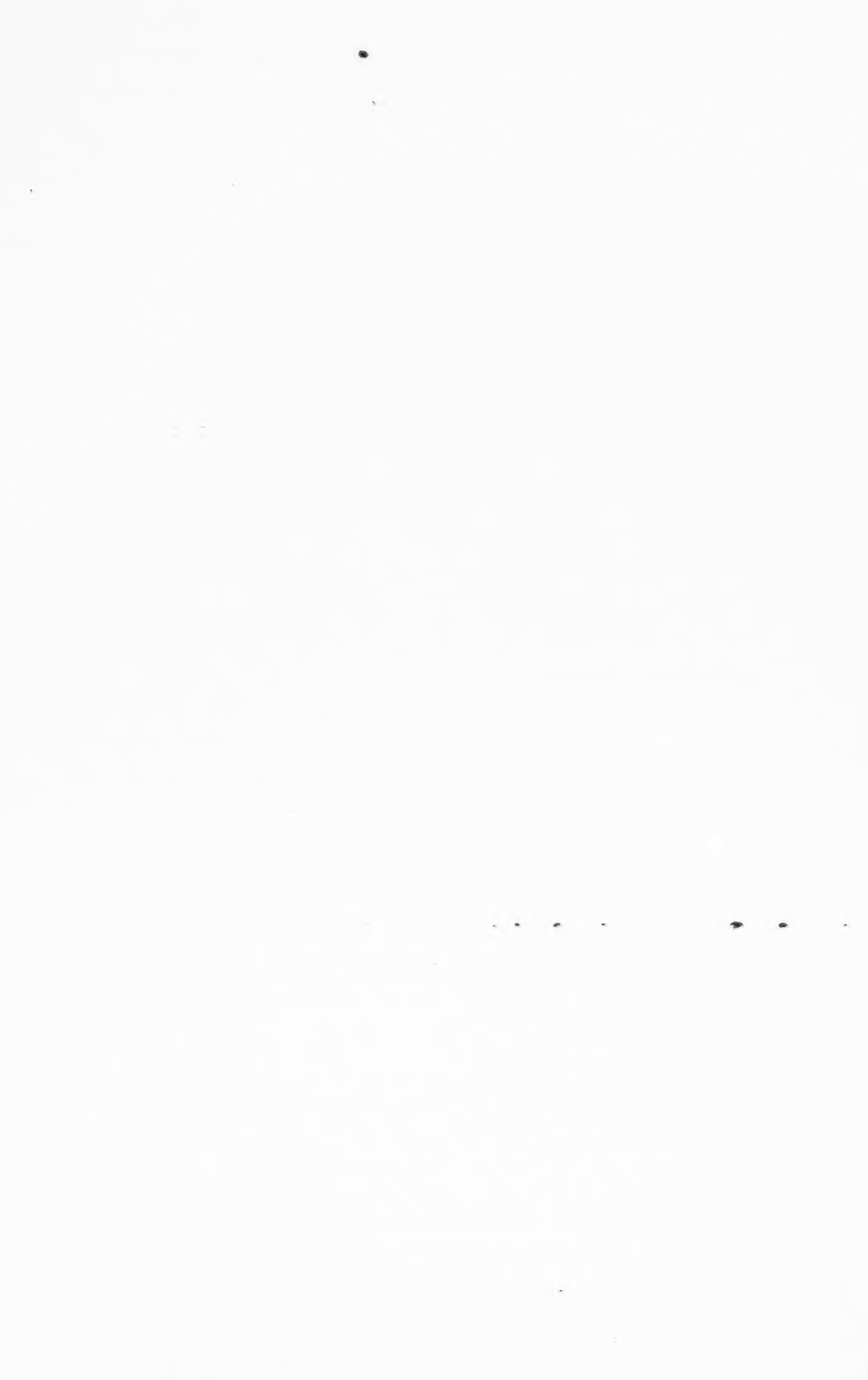
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121 Clerk's Certificate to foregoing transcript omitted in printing.

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. —

THE UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM R. JOHNSON

No. —

THE UNITED STATES OF AMERICA, PETITIONER

v.

JACK SOMMERS, JAMES A. HARTIGAN, JOHN M.
FLANAGAN, WILLIAM P. KELLY AND STUART
SOLOMON BROWN

PETITION FOR WRITS OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT

The Solicitor General on behalf of the United States, prays that writs of certiorari issue to review the judgments of the Circuit Court of Appeals for the Seventh Circuit (R. 222), reversing convictions under Section 145 (b) of the Revenue Acts of 1934, 1936, and 1938.

OPINIONS BELOW

The majority and dissenting opinions (R. 186-22) in the court below, and its opinion on rehearing (R. 221) are not yet reported.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered September 15, 1941 (R. ~~227~~). A petition for rehearing was denied on November 6, 1941 (R. ~~231~~). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and the Rules of Practice and Procedure in Criminal Cases promulgated by this Court.

QUESTIONS PRESENTED

The respondents were convicted of criminal violations of the income-tax laws. The court below reversed upon a variety of grounds which appear to raise the following principal questions:

1. Whether the indictment or any part thereof was void.

2. Whether it was incumbent upon the Government to offer proof in support of the allegation of the indictment that the grand jury was properly continued.

3. Whether any of the counts were duplicious or invalid by reason of inconsistency.

4. Whether the evidence sustained the convictions.

The form of the opinion reversing the judgments - such as it is - does not spell out clearly all of the issues that are squarely in the case. We believe the foregoing questions presented outline generally the issues involved but they are not intended in any way to limit the petition. It is the Government's position that the reversal below was improper on all grounds however framed.

5. Whether the examination of the expert witness Clifford invaded the province of the jury.

STATUTES INVOLVED

The relevant provisions of the statutes involved are set forth in the Appendix, *infra*, pp. 24-26.

STATEMENT

On March 29, 1940, an indictment in five counts was returned against the respondents and others¹ (R. 2-25). The first four counts charged the defendant Johnson with willful attempts to defeat and evade a large part of his income taxes for the calendar years 1936-1939, inclusive, and charged the co-defendants with willfully aiding and abetting, etc., Johnson's unlawful attempts at evasion. The fifth count charged all the defendants jointly with conspiracy to defraud the United States of Johnson's taxes for the years in controversy.

The theory of the prosecution was that Johnson owned various gambling places in and around Chicago from which he derived large amounts of unreported income and that other respondents pretended to own such places thereby concealing his financial interest therein. R. 62-108. Johnson was identified with the gambling houses in a variety of ways, and it was shown that the houses

¹ Upon motion of the United States Attorney the issue was dismissed as to four of the defendants. R. 143. and three other defendants were found not guilty on all of the counts. R. 150.

operated as a unit, maintaining a central clearing-house with private interconnecting telephones (Bill of Exceptions, Vol. I, pp. 40-42, 48-52, 56-57, 73-84, 94-97, 113, 128-131, 150-158, 174-192, 195-205, 225-228, 234-240, 276-278, 283-292, 305-306, 306-307, 349-372, 411-412, 419-434, 476-500). The fact that his actual income was greatly in excess of the amounts reported was confirmed by showing that during the years in question he purchased various properties and made other expenditures aggregating far more than his available resources based upon admitted assets and reported income. (Bill of Exceptions, Vol. I, pp. 5-10, 36, 49, 51, 56-62, 81, 84, 417, 741-742).

Some of the codefendants were acquitted, but Johnson and the remaining respondents were found guilty.³ Johnson was sentenced to imprisonment for five years and fined \$10,000.⁴ The other respondents were given lesser sentences and fines (R. 155-162).

The Circuit Court of Appeals, Judge Evans dissenting, reversed the judgments upon a variety of grounds. It is not entirely clear from the lengthy opinion what part each ground played in the re-

³ Johnson, Sommers, Hartigan, Flanagan, and Kelly were found guilty on all five counts; Brown was found guilty only on the third, fourth, and fifth counts (R. 152).

⁴ He was sentenced to imprisonment for five years on each of the first four counts and two years on the fifth count, the terms to run concurrently; he was fined \$10,000 on each count, but with the provision that payment of one \$10,000 fine should discharge all fines (R. 154-155).

versal, but as we read the opinion we believe its action was based upon the following considerations:

1. The court held that the entire indictment was void, since it was not returned by a legally constituted grand jury by reason of an allegedly invalid order of continuance. The grand jury was impaneled during the December 1939 term of the District Court of the Eastern Division of the Northern District of Illinois (R. 2, 28, 32).⁵ By order dated January 24, 1940, during the December term, the grand jury was authorized to sit during the February 1940 term to finish investigations begun but not finished during the December term. No question is raised as to the legality of the grand jury as originally impaneled or as continued into the February term. On February 28, 1940, the District Court entered a further order extending the life of the grand jury into the March term, reading as follows (R. 28-29, 32-33):

Now comes the Second December Term,
1939 Grand Jury for the Northern District
of Illinois * * * and * * * requests

⁵ Section 152 of Title 28, U. S. C., Supp. V, provides that the terms of the District Court for the Eastern Division of Illinois shall be held on the first Mondays in February, March, April, May, June, July, September, October, and November, and the third Monday in December.

⁶ Both the January 24 and the February 28 orders of continuance were based upon Sec. 421, Tit. 28, U. S. C. Supp.

that an order be entered authorizing them, the said Second December, 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished during the said February 1940 Term of Court;

It is Therefore Ordered That the Second December 1939 Grand Jury, now sitting in this Division and District, be and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations.

The indictment was returned on March 29, 1940, during the March term and its preamble alleged (R. 2):

The Grand Jurors * * * at the December Term * * * having begun but not

V. (Sec. 284, Judicial Code, as amended, c. 746, 50 Stat. 748), which provides:

"* * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than three terms. * * *

These provisions were subsequently amended (c. 401, 54 Stat. 110) by changing the words "three terms" to "eighteen months."

finished during said December Term of Court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this Court * * * during the February and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term of Court * * *.

Johnson filed a motion to quash the indictment (R. 28-31) and the other defendants filed a plea in abatement "in the nature of a motion to quash" (R. 32-35), in each of which it was charged in substantially identical language that the order continuing the grand jury into the March term was void. The District Court overruled the motion to quash and granted the Government's motion to strike the plea in abatement (R. 45-46), but the court below held that the motion to quash and the so-called plea in abatement should have been sustained. In reversing the judgment it held that the order continuing the grand jury into the March term was void, on the ground that it authorized the grand jury to continue investigations begun in the February Term whereas under the statute the grand jury could be continued only to complete investigations begun in its original term. However, the Government contested that interpretation of the order and contended that in any event, no new investigation had been begun in February. The record affirmatively discloses that the investigations were

begun during the December session.⁷ (Bill of Exceptions, Vol. II, pp. 614-692.) See also *United States v. Brown*, 116 F. (2d) 455, 456 (C. C. A. 7th), involving a contempt proceeding against one of the respondents herein with respect to testimony before the grand jury as to these very matters in which it also appears that the investigations leading up to the indictment herein were commenced during the December term.

2. The court held further that even if the order of continuance were valid, the grand jury failed to comply with the order, for it in fact undertook a new investigation in the March term, witness the count relating to Johnson's 1939 taxes. The court ruled that the Government's motion to strike should have been overruled and the Government required to answer (R. 187).⁹⁰

3. Although the indictment itself alleged that the grand jury continued to sit during the February and March terms for the purpose of finishing investigations begun but not finished during the December Term (R. 2), the court held that such allegations standing alone were insufficient and that it was incumbent upon the Government to

⁷ The defendants contended in addition, and the court below held, that as to the fourth count (evasion of 1939 taxes by filing false return on March 15, 1940) the investigations could not possibly have been begun prior to March 15, 1940. But whatever may be said of that count cannot affect the first three counts, and in any event, as will be shown *infra*, pp. 15-17, the 1939 taxes were part of the same general "investigations" theretofore begun within the meaning of the statute.

offer proof in support thereof: "Failure of proof with reference to the allegation under discussion is, in our opinion, fatal to the judgment" (R. 190).

4. The court below also ruled that the first four counts of the indictment were duplicitous and inconsistent as to the respondents other than Johnson, in that Johnson was charged with a substantive crime committed on March 15 of each of the years in question whereas the aiders and abettors were charged with a crime consisting of a continuous course of conduct over a period of years. Moreover, the court held the first four counts were further demurrable since, in its view, the co-defendants were charged as accessories both before and after the fact in each count (R. 191-193).

5. As to the first count, involving the year 1936, the court ruled that the evidence did not support the charge and that Johnson's motion for a directed verdict should have been allowed. It also ruled that the motion for a directed verdict on behalf of the co-defendants should have been granted as to the first four counts, since, in its view, there was no evidence that the co-defendants had anything to do with the preparation of Johnson's returns (R. 195-196).

6. Finally, the court held that the testimony of the expert witness Clifford invaded the province of the jury since the questions relating to Johnson's income and taxes were not hypothetical in form.*

* It was quite clear, however, from the entire testimony, that Clifford's conclusions were based upon figures appear-

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the grand jury was not lawfully constituted in that the order of the District Court extending its sitting to the term at which the indictment was returned was void.

2. In failing to hold that in any event, even if the grand jury were given excessive authority, it nevertheless confined its investigations within permissible limits and that the indictment was therefore valid.

3. In holding that Section 556 of Title 18, United States Code, did not apply to cure any asserted defect in the grand jury proceedings, or any other alleged error or defect occurring in this case.

4. In holding that the respondents' motion to quash and plea in abatement were sufficient to require the Government to answer.

5. In holding that the substantive counts of the indictment as to the respondents other than Johnson were duplicitous and demurrable in that:

(a) They charged aiding and abetting at times other than the alleged time of the commission of the principal offense by Johnson;

ing in voluminous exhibits theretofore introduced into evidence; and on cross-examination he was questioned in exhaustive detail as to his "assumptions," among others, that Johnson owned the gambling houses (Tr. 3901), that a certain currency exchange belonged to Johnson (Tr. 3920), and that certain checks cashed at another currency exchange were part of Johnson's income (Tr. 3921-3933).

(b) They charged the respondents other than Johnson as accessories both before and after the fact.

6. In holding that directed verdicts for the respondents other than Johnson should have been granted as to the substantive counts on the ground that there was no evidence that these respondents had assisted in the preparation of Johnson's returns or had any knowledge as to their contents, and in holding that a directed verdict should have been granted for Johnson as to the first count.

7. In holding that the testimony of an expert witness for the Government invaded the province of the jury and constituted reversible error.

8. In reversing the judgments of the District Court.

REASONS FOR GRANTING THE WRIT

The respondent Johnson, a professional gambler of "towering stature ^{and} ~~in~~ that fraternity" (R. 93), was convicted together with five co-defendants of evasion of large amounts of income taxes after a long jury trial. The verdict was amply supported by the evidence.* The reversal by the

* In support of the charges of tax evasion, the Government produced evidence tending to show Johnson's ownership of a group of gambling houses and offered proof that his expenditures in the years in question greatly exceeded his reported income. The court below held that the proof of his income on the expenditure theory was sufficient to present a jury question except as to the year 1936 (Count 1 of the indictment), but denied that the proof showed he was the owner of the gambling houses and therefore entitled to their proceeds. (R. 94-95) We believe that this was a clear in-

court below, based primarily upon technical grounds, is, we believe, such a miscarriage of justice as to call for the exercise of this Court's supervisory powers.

1. The holding that the grand jury had no power to sit during the March term is without foundation. The grand jury was impaneled during the December term, and by an order of undisputed validity (January 24) was authorized to continue to sit during the February term to complete its investigations theretofore begun. It had no authority to commence any new investigations in February, nor did the motion to quash or the plea in abatement even allege that any new investigations were commenced in February (R. 28-31, 32-35). The February 28 order continuing the grand jury into the March term in effect authorized it "to finish investigations begun but not finished by said

vasion of the province of the jury and a substitution by the court below of its own views upon the credibility of witnesses and the weight of the evidence for those of the jury. *Burton v. United States*, 202 U. S. 344; *United States v. Brown*, 116 F. (2d) 455 (C. C. A. 7th); *United States v. Mann*, 108 F. (2d) 354 (C. C. A. 7th). As pointed out by Judge Evans, there was substantial evidence of Johnson's ownership of the gambling houses and the jury found that the income therefrom belonged to Johnson by virtue of that ownership (R. 247). Similarly, the court without justification held that the codefendants' motion for a directed verdict should have been granted as to the first four counts; the evidence connecting the codefendants with Johnson's unlawful acts was more than ample to sustain the verdict.

Grand Jury during the said December 1939 and the said February 1940 Terms * * * (R. 28, 32). Although this order may perhaps have been inartistically drawn, it is quite plain that when taken in conjunction with the January 24 order and the solemn statement of the grand jury in the indictment to the effect that it continued to sit by order of the court during the February and March terms "for the purpose of finishing investigations begun but not finished during said December term (R. 2)," the February 28 order did not authorize the grand jury to engage in any investigations not commenced during the December Term. The order was therefore valid, and in any event, the indictment was in fact the product of investigations which were begun during the December term, so that even if the grand jury were given excessive authority it actually confined its activities within permissible limits (Bill of Exceptions, Vol. II, pp. 614-692).¹⁰

¹⁰ The respondents will no doubt contest this assertion as to the fourth count, involving Johnson's 1939 taxes and return filed on March 15, 1940. But, as will be indicated in Reason 2, *infra*, p. 15, the term "investigations" must be construed so as to include a broad field of inquiry growing out of a central factual situation. Here, the grand jury was investigating the financial affairs of respondent Johnson, and it was proper, indeed necessary, to complete the investigation up to the present time. The court therefore was obviously wrong in holding that the investigations begun in the December term could not possibly have in-

In these circumstances, it is plain that even if the February 28 order were technically incorrect, the error, if any, was not prejudicial and could not affect the validity of the indictment. Indeed, Section 556, Title 18, U. S. C., unambiguously provides:

No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant. * * *

The court refused to apply these provisions, stating without further elaboration that "the question presented is one of substance and not of form" (R. 147), and citing *Crain v. United States*, 162 U. S. 625, which has been expressly overruled on this point. *Garland v. Washington*, 232 U. S. 642.¹¹

cluded the crime growing out of Johnson's false return which was filed on the following March 15. But even if the grand jury had exceeded its proper authority with respect to that count, it is clear beyond question that the first, second, third and fifth counts were valid.

¹¹ See also *Badders v. United States*, 240 U. S. 391, 395; *Berger v. United States*, 295 U. S. 78; *Breese v. United States*, 226 U. S. 1; *Rice v. United States*, 35 F. (2d) 689 (C. C. A. 2d); *United States v. Austin-Bagley Corp.*, 31 F. (2d) 229 (C. C. A. 2d); *Williams v. United States*, 275 Fed. 129 (C. C. A. 9th).

The alleged invalidity of the indictment was the principal ground of reversal and is of such hyper-technical character as to constitute a serious miscarriage of justice in the enforcement of criminal law. We believe it is a matter of such importance as to call for the exercise of this Court's supervisory powers.

2. Although the decision below, to the extent that it merely turns upon the interpretation of the February 28 order, may not have any immediate impact upon other cases, it may have a wide and impeding effect upon grand-jury procedure through its unwarranted interpretation of the word "investigations." The court has held that, as to the fourth count, the crime relating to Johnson's 1939 taxes could not have been committed until March 15, 1940, and, therefore, would require new "investigations."

That interpretation of "investigations" is inconsistent with the traditional and firmly established concept of a grand jury's functions and powers. In *Blair v. United States*, 250 U. S. 273, this Court said (p. 282):

It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusa-

tion of crime. As has been said before, the identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning.

See also *Hale v. Henkel*, 201 U. S. 43; *United States v. Thompson*, 251 U. S. 407; *Cobbledick v. United States*, 309 U. S. 323; *In re Black*, 47 F. (2d) 542 (C. C. A. 2d); *Shushan v. United States*, 117 F. (2d) 110 (C. C. A. 5th), certiorari denied, 313 U. S. 574.

The ruling of the court below substantially impedes the carrying out of an essential function of grand juries, the thorough investigation of complex cases. Under the court's ruling, to insure the legality of an indictment returned other than in the original term, the resulting indictments, including the precise issues and particular defendants, must be anticipated and preliminary investigation begun during the original term as to each crime eventually charged. But, as vividly pointed out in Judge Evans' dissenting opinion, a comprehensive investigation of an involved situation may ultimately reveal crimes wholly unanticipated at the beginning of the grand jury's deliberations. Plainly, Congress must have intended to give it sufficient power to indict with respect to all crimes growing out of the central inquiry.¹²

¹² The Court's holding largely nullifies the repeated efforts of Congress in enacting and amending the applicable sentence of Section 284 of the Judicial Code (Sec. 421, Tit. 28,

Johnson's 1939 income taxes were part of a single general investigation of his financial affairs, not restricted to any particular year, and undertaken with a view to determine possible income-tax violations. The hypercritical ruling of the majority on this point was properly condemned by the dissenting opinion, and the limitation thus imposed upon the grand jury's powers is of such sweeping character as to call for review by this Court

U. S. C., as amended). This sentence was added to the Section in 1931. Prior to that time it had been held that the district courts could authorize the grand jury to sit after the expiration of the terms. *United States v. Rockefeller*, 221 Fed. 462 (S. D. N. Y.); *Elwell v. United States*, 275 Fed. 775 (C. C. A. 7th); and *Johnson v. United States*, 5 F. (2d) 471 (C. C. A. 4th). The correctness of these decisions, however, was questioned, and from 1923 on there were regularly introduced in Congress bills authorizing extended sittings for the purpose of permitting the completion by a single grand jury of important investigations, particularly anti-trust investigations. S. Rep. No. 1189, 67th Cong., 4th Sess.; H. Rep. No. 366, 68th Cong., 1st Sess.; S. Rep. No. 1401, 70th Cong., 2d Sess. The bills as introduced used the phrase "business unfinished" rather than the word "investigations" as added by the Senate and finally enacted in 1931. This amendment was stated in the Senate Committee Report to be simply a clarifying one. S. Rep. No. 877, 71st Cong., 2d Sess. In 1940 the sentence in question was amended to extend the period during which the grand jury could sit from three terms to eighteen months in order to permit the conclusion by a single grand jury of complex investigations in judicial districts in which the term was limited to a month's duration. H. Rep. No. 1747, 76th Cong., 3d Sess.

3. As an alternative to its ruling on the second order of continuance, the court below held that the motion to quash and so-called plea in abatement were sufficient to require the Government to answer. At most these preliminary motions alleged only the ultimate conclusion of fact that the investigations of the matters alleged in the indictment had not been begun in the original term of the grand jury (R. 30-31, 34-35). No detailed allegations of fact upon which this conclusion was based were given. No allegations of fact from which prejudice might be inferred were made. Both are fundamental to the sufficiency of preliminary motions. *Hyde v. United States*, 225 U. S. 347; *Agnew v. United States*, 165 U. S. 36; *Shushan v. United States*, 117 F. (2d) 110 (C. C. A. 5th), certiorari denied, 313 U. S. 574; *United States v. Parker*, 103 F. (2d) 857 (C. C. A. 3d), certiorari denied, 307 U. S. 642; *Olmstead v. United States*, 19 F. (2d) 842 (C. C. A. 9th), affirmed, 277 U. S. 438. See also *United States v. McGuire*, 64 F. (2d) 485 (C. C. A. 2d), certiorari denied, 290 U. S. 645; *Colbeck v. United States*, 10 F. (2d) 401 (C. C. A. 7th), certiorari denied, *sub. nom. Hackethal v. United States*, 270 U. S. 663.

* The court's decision on the motions likewise fails to give effect to the established principle that a motion to quash is largely addressed to the discretion of the trial court and will not be reviewed except on a showing of an abuse of discretion. *DuPont v. United States*, 161 U. S. 306; *United States v. Hamilton*, 109 U. S. 63; *Sherman v. United States*, 80 F. (2d) 629 (C. C. A. 4th); *Sutton v. United States*, 79 F. (2d) 893 (C. C. A. 9th); *Hill v. United States*, 15 F. (2d) 14 (C. C. A. 8th).

Without a compensating meritorious benefit to the accused, the court's ruling opens the door to dilatory tactics and hopeful delvings into grand jury proceedings. The inevitable result would be unjustifiable delay, violation of the secrecy of grand jury proceedings and extensive fishing expeditions which have been so often condemned by the courts. Such a requirement, we submit, constitutes a wholly unwarranted obstacle to the fair and efficient administration of the criminal laws.

4. The decision of the court below not only requires the Government to answer such motions to quash, but goes further and unconditionally imposes the burden of proving the allegations of the indictment allegations as to the continuance of the grand jury. In the opinion of the court, " * * * failure to prove the allegation with reference to the authority of the Grand Jury to act is likewise fatal." If this be correct, it is incumbent upon the Government to prove as a preliminary matter, perhaps before a petit jury, when the investigation as to each count of an indictment began, what information was before the grand jury at various times and whether its final actions were within the boundaries of the original investigation. The mere statement of this contention bears its own refutation.¹

¹ On the trial of a preliminary motion the burden is on the defendant to prove any illegality of the grand jury proceedings. The Government is not required to prove illegality. *Mullins v. United States*, 79 F. 2d 1000 (C. C.

But if permitted to stand unreversed this holding of the court may work much havoc in the prosecution of criminal cases. Indeed, we are informed that it has already been invoked to pry into the deliberations of a grand jury in an anti-trust proceeding where the Government has been ordered by a district court to prove, before a petit jury, that the investigations during the original term of the grand jury embraced the crimes charged in the indictment returned in the extended term. It is therefore a matter of considerable importance that this issue be reviewed.

5. With respect to the demurrers and motions for directed verdicts of not guilty, the Circuit Court of Appeals held that to establish the crime of aiding and abetting an attempt to evade income tax it is insufficient to charge acts at times other than the time of the commission of the offense (here the time of the filing of the return) and to prove acts committed at such times. The essence of the crime defined in Section 145 (b) of the Revenue Acts of 1934, 1936, and 1938, however, is not the mere filing of a false return. As the statute expressly states, it consists of an attempt to evade income

A. 1-st), certiorari denied, 296 U. S. 658; *Cravens v. United States*, 62 F. (2d) 261 (C. C. A. 8th), certiorari denied, 289 U. S. 733. The presumption of legality is not gone, and the burden of proof does not shift to the Government, where the preliminary motion is overruled, or where no preliminary motion is made. Cf. *Carroll v. United States*, 16 F. (2d) 951 (C. C. A. 2d), certiorari denied, 273 U. S. 763.

taxes in any manner. The filing of a false return is only one means of attempted evasion marking its consummation in point of time. *United States v. Noveck*, 273 U. S. 202; *Emmich v. United States*, 298 Fed. 5 (C. C. A. 6th), certiorari denied, 266 U. S. 608. The crime also may be committed by filing an amended return (*Levy v. United States*, 271 Fed. 942 (C. C. A. 3d)) or by willfully failing to file any return (*United States v. Miro*, 60 F. (2d) 58 (C. C. A. 2d)). The crime of attempting to evade, therefore, clearly can be aided by acts unrelated to the preparation or filing of the tax return, and in holding that acts committed at times other than the time of preparation and filing of the return are not aiding and abetting under Section 332 of the Criminal Code (18 U. S. C. Sec. 550), the instant ruling is squarely in conflict with all other decisions interpreting Section 332. *Jin Fuey Moy v. United States*, 254 U. S. 189; *Silkworth v. United States*, 10 F. (2d) 711 (C. C. A. 2d), certiorari denied, 271 U. S. 664; *Reinstein v. United States*, 282 Fed. 214 (C. C. A. 2d), certiorari denied, 260 U. S. 722; *Collins v. United States*, 20 F. (2d) 574 (C. C. A. 8th); *Smith v. United States*, 24 F. (2d) 907 (C. C. A. 5th); *Johnson v. United States*, 62 F. (2d) 32 (C. C. A. 9th); *Schrader v. United States*, 94 F. (2d) 926 (C. C. A. 8th).

The effect of the court's decision, therefore, is to bar completely the application of Section 332 of the Criminal Code to crimes defined under

Section 145 (b) of the Revenue Acts and Internal Revenue Code. The decision leaves available for enforcement of the revenue acts in this field of criminal activity only the crime of aiding and assisting in the filing of a false return, which crime is expressly provided for in what is now Section 3793 of the Internal Revenue Code. The question presented as to the interpretation of Section 332 of the Criminal Code is thus of considerable importance in the administration of criminal tax statutes and should be reviewed by this Court.¹⁰

6. In ruling that a defendant may not be charged in the same count of an indictment as an accessory both before and after the fact, the court below has further misinterpreted Section 332 of the Criminal Code. ~~Under~~ this section a person

¹⁰ Apart from the court's interpretation of Section 332 of the Criminal Code, it is worthy of mention that the allegations of the time of acting render the indictment duplicitous and denumerative as inconsistent with the decisions that the indictment need contain no charge as to acting and abetting but may charge the accessory, direct, as a principal. *Acquaintance v. United States*, 30 F. 2d 201, 87-1 C. C. A. 810, certiorari denied, 302 U. S. 637; *Johnson v. United States*, 23 F. 2d 101, 90-1 C. C. A. 712, 41-1, with the decisions that the indictment need not allege the time of acting and abetting (*Johnson v. United States*, 1 F. 2d 579, 1 C. C. A. 780; *Johnson v. United States*, 25 Fed. 71, 1 C. C. A. 201). Under these decisions the allegations of time become surplusage. *Johnson v. United States*, 202 U. S. 604.

¹¹ In reference to this point, the Government questions the correctness of the court's premise that the respondents other than Johnson were not charged as accessories after the fact.

who aids and abets the commission of a crime is declared to be a principal. As a principal, he is punishable as such. His continued participation in the criminal plan after the commission of the crime does not make him less a principal. Section 333 of the Criminal Code (U. S. C., Title 18, Sec. 551), providing a penalty for accessories after the fact of "one-half the longest term of imprisonment * * * prescribed for the punishment of the principal" can have no application. The decision of the court below is in conflict with *Madden v. United States*, 23 F. (2d) 180 (C. C. A. 8th). See also *Skelly v. United States*, 76 F. (2d) 482 (C. C. A. 10th); and cf. *Smith v. United States*, *supra*; *Collins v. United States*, *supra*.

7. The court's ruling that the testimony of the Government's expert witness Clifford was prejudicial is, we submit, so arbitrary as to require review by this Court. Clifford was asked to state the amount of Johnson's income for the years in question and to state the amount of tax due thereon. The court below held that the questions should have been hypothetical in form so as to show that Clifford's conclusions were based upon assumptions that various contested items of income were being attributed to Johnson in the computations. But, as pointed out in the dissenting opinion, the entire line of testimony made it unmistakably clear that Clifford's conclusions were based upon the various exhibits and evidence

therefore presented in the trial, and that the jury could not possibly have been misled by the form of the questions. Moreover, Clifford was later subjected to a most exhaustive cross-examination by the defendants' counsel in which any vestige of doubt as to his assumptions was completely destroyed. No possible prejudice could have resulted from Clifford's testimony.

CONCLUSION

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

DECEMBER 1941

APPENDIX

Criminal Code:

SEC. 332. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal. (U. S. C., Title 18, Sec. 550.)

SEC. 333. Whoever, except as otherwise expressly provided by law, being an accessory after the fact to the commission of any offense defined in any law of the United States, shall be imprisoned not exceeding one-half the longest term of imprisonment, or fined not exceeding one-half the largest fine prescribed for the punishment of the principal, or both, if the principal is punishable by both fine and imprisonment; or if the principal is punishable by death, then an accessory shall be imprisoned not more than ten years (U. S. C., Title 18, Sec. 551.)

Internal Revenue Code:

SEC. 3793. . . .

Fraudulent Returns, Affidavits, and Claims—

1. *Assistance in Preparation or Production*—Any person who willfully aids or assists in the preparation or production of any fraudulent return or affidavit required by the Internal Revenue laws, or a false or fraudulent return, affidavit, claim, or document, shall, whether or not such person

or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (U. S. C. Supp. V. Title 26, Sec. 3793.)

Judicial Code:

SEC. 269. * * * On the hearing of any appeal, certiorari, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties (U. S. C., Title 28, Sec. 391).

SEC. 284. * * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than three terms. * * * (U. S. C. Supp. V. Title 28, Sec. 421).

Revenue Act of 1936, c. 690, 49 Stat. 1648, 1703:

SEC. 145. PENALTIES.

* * * * *

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully

attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Revenue Act of 1938, c. 289, 52 Stat. 447, 513:

Section 145 (b) is identical with Section 145 (b) of the Revenue Act of 1936, *supra*.

Revised Statutes:

SEC. 1025 [as amended by Act of May 18, 1933, c. 31, 48 Stat. 58]: No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, or by reason of the attendance before the grand jury during the taking of testimony of one or more clerks or stenographers employed in a clerical capacity to assist the district attorney or other counsel for the Government who shall, in that connection, be deemed to be persons acting for and on behalf of the United States in an official capacity and function. (U. S. C., Title 18, Sec. 556.)



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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 799

THE UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM R. JOHNSON

No. 800

THE UNITED STATES OF AMERICA, PETITIONER

v.

JACK SOMMERS, JAMES A. HARTIGAN, JOHN M.
FLANAGAN,¹ WILLIAM P. KELLY AND STUART
SOLOMON BROWN

*ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority and dissenting opinions in the court below (1 R. 180-221), and the opinion on

¹ Upon information, we are satisfied that Flanagan is now dead and suggest that the petition may be dismissed as to him.

² The record in this case consists of four volumes which will be referred to as 1 R., 2 R., 3 R., and 4 R., respectively.

rehearing (1 R. 231) are reported at 123 F. (2d) 111.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered September 15, 1941. (1 R. 222.) A petition for rehearing was denied on November 6, 1941. (1 R. 232.) The petition for writs of certiorari was filed on December 12, 1941, and was granted February 2, 1942. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and the Rules of Practice and Procedure in Criminal Cases promulgated by this Court.

QUESTIONS PRESENTED

The respondents were convicted of criminal violations of the income-tax laws. The court below reversed upon a variety of grounds which appear to raise the following principal questions:

1. Whether the indictment or any part thereof was void.
2. Whether it was incumbent upon the Government to offer proof in support of the allegation of the indictment that the grand jury was properly continued.
3. Whether any of the counts were duplicitous or invalid by reason of inconsistency.

The first volume contains the pleadings, opinions, etc. The second and third volumes comprise the bill of exceptions. The fourth volume contains a transcript of certain testimony, that was added to the other three volumes by an order amplifying the record while this case was pending below.

4. Whether the evidence sustained the convictions.

5. Whether the examination of the expert witness Clifford invaded the province of the jury.

STATUTES INVOLVED

The relevant provisions of the statutes involved are set forth in the Appendix, *infra*, pp. 60-62.

STATEMENT

The respondents and others were indicted on five counts. The first four counts charged the defendant Johnson with wilful attempts to defeat and evade a large part of his income taxes for the calendar years 1936-1939, inclusive, and charged the other defendants with aiding and abetting Johnson's attempts to evade. The fifth count charged all of the defendants together with conspiracy to defraud the United States of Johnson's income taxes for those years.¹ (1 R. 2-25.)

Although Johnson did report substantial amounts of income for each of the years in controversy, the indictment charged that he had in fact received a vast amount in excess of what he had reported.²

¹ Upon motion of the United States Attorney, the cause was dismissed as to four of the defendants. (1 R. 143.)

² Thus, for the year 1936, Johnson reported net income of \$161,892.74, whereas the indictment charged that his net income for that year was \$605,825.34 (R. 3, 5). For the year 1937, he reported net income of \$248,660.18, whereas he was charged with receiving \$880,866.20 net income (R. 7, 8). For

The theory of the prosecution was that Johnson was the owner of a number of gambling houses in and around Chicago⁵ from which he derived large amounts of income which he failed to report, and that other respondents posed as the owners of the places, thereby concealing Johnson's financial interest in them.⁶ The Government undertook to show that the various gambling houses, although ostensibly separately owned, were operated as a

the year 1938, he reported net income of \$101,946.68, whereas he was charged with receiving \$959,356.60 net income (R. 11, 12). And for 1939 he reported net income of \$251,715.47, whereas he was charged with receiving \$931,566.90 net income (R. 14, 15).

⁵ The indictment specifically named some twenty-five separate houses, twenty-one of which were identified by the following names (1 R. 19) :

The Horse-Shoe Club	The Western Club
The Casino Club	The Select Club
The Dev-Lin	The Mayfair Club
The Lincoln Tavern	The Northland Club
The Harlem Stables	The Club Proviso
The House of Niles	The 4011 Club
The D. & D. Club	2135 Lake Park Club
The Bon-Air Casino	The Harlem Club
The Villa Moderne	The 11901 Vincennes Club
The 4020 Club	The 406 Club
The Southland Club	

⁶ Thus the defendant Sommers stated that he owned the Horseshoe Club and the Dev-Lin Club (2 R. 467). Hartigan stated that he owned the Harlem Stables. (2 R. 462.) The defendant Wait testified that Hartigan owned the Lincoln Tavern. (3 R. 896.) Flanagan testified that he owned the 4020 Club, a place at 2135 South Pulaski Road and a hand-book service bureau at 2135 South Pulaski (3 R. 931-932.) Kelly stated that he owned the D & D Club. (2 R. 458.)

unit, and that Johnson was so identified with them as to prove that he was the true owner.

That the gambling houses were operated as a unit was amply disclosed by the evidence. It was shown that horse racing information was furnished to the houses through a central clearing house which in turn purchased the information from the Nationwide News Service or its predecessor under a single account. (2 R. 151-162, 174-180.) The houses were inter-connected through the clearing house by a private telephone exchange. Each house had both one-way broadcasting service to carry the racing news and a two-way connection. The telephone service was carried by the telephone company as a single account. (2 R. 195-215, 174-180.)

Furniture and equipment were interchanged between the houses. One mover made the transfers. He carried the business as a single account. (2 R. 132-134, 265-271.) The same construction crew made alterations and repairs at the houses. (2 R. 128-132, 235-240.)

Bus service was provided to the various houses from pick up points and between the houses. A single bus company provided the service to the different houses and carried the business as a single account. (2 R. 306-307, 315-316, 388-390.) The drivers of private cars were hired to drive customers to and between the clubs. (2 R. 249, 250-251, 297, 381-382, 389-390.)

The various respondents acted as bosses or managers at houses other than the houses which they had stated they owned. Witnesses described them as acting as day or night shift bosses or as acting as boss when another was absent. (2 R. 174-192, 293-303, 309-312, 316-317, 322-323, 324-326, 326-327, 333-334, 345-348, 350-364, 383-385, 387, 396-400, 3 R. 566-573.)

Employees were interchanged among the houses. Many witnesses testified that they were directed to change from house to house by the various respondents and to houses other than the houses named by the particular respondent as owned by him. (2 R. 250-251, 254-256, 293-299, 316-317, 322-323, 324-326, 326-327, 328-329, 337-338, 387, 396-400.) A school at which "dealers" were taught their art was operated at the Horseshoe Club, and was attended by employees of the other houses as well as those working at the Horseshoe. (2 R. 383-385.)

A further link which connected the operations of the gambling houses was the use of a so-called currency exchange which furnished private banking facilities for the houses. That business, formerly conducted by Sommers, Kelly and apparently Hartigan, at the "Albany Park Currency Exchange" in a single account (2 R. 476-500), was later transferred to the "Lawrence Avenue Currency Exchange" operated by Brown, and was there transacted through a single account. (2 R. 542-543; 3 R. 587-589, 595-598, 620.)

Johnson was identified with the houses in a variety of ways. He admitted ownership of the buildings in which the 4020 Club, 2141 South Pulaski Road, and the D & D Club were located and he was shown to be the owner of the building in which the Lawrence Avenue Currency Exchange was located. (2 R. 57, 410-418; 3 R. 950.) Johnson installed air conditioning in the D & D Club at a considerable expense to himself without increasing the "rent." (2 R. 16-25, 39-44.) The construction crew which worked on the gambling houses worked on the Bon Air Country Club, shown to be owned by Johnson, and on Johnson's farm. (2 R. 128-132, 235-240.)

A number of witnesses testified to direct acts of ownership and control by Johnson. A manager of the Nationwide News Service testified that Johnson and he discussed the rates on the racing information account and that Johnson stated that his rates should be lower than rates charged other bookmakers because customers were drawn into his places by other gambling games. (2 R. 151-162.) Johnson ordered an accountant to install an accounting system at the Lincoln Tavern. (2 R. 305.) Johnson offered to repay the loss of a customer at the Dev-Lin Club after a dispute about "crooked" dice. (2 R. 379-380.) A customer at the Horseshoe Club testified that she complained to Sommers about a reduction in the limit on betting, that Sommers told her she would have to see Johnson, that she saw Johnson and that Johnson

said he would get in touch with Sommers and have the limit restored. (3 R. 566-567, 573.)

Johnson personally paid the claims of two witnesses who had operated a tavern at the Harlem Stables prior to the opening of the gambling house and who had been forced out to make way for the gambling house. (2 R. 283-293.) Johnson likewise paid the claims for unpaid wages of employees of the prior owners. (2 R. 472-476.)

Johnson employed or was instrumental in the employment of numerous men at the various gambling houses. (2 R. 222-224, 225-228, 276-278, 309-312, 315-316, 322-323, 328-329, 387, 396-400.) One employee testified that Johnson told Sommers he wanted the witness to go to work, that Johnson had fired him years previously and that Johnson stated to Sommers at the time of rehiring that "this is one of our good men that couldn't behave himself." (2 R. 176-178.) Another employee described Johnson as walking around the gambling houses at which the witness worked acting "like the head of the house." (2 R. 348-373.) The same witness testified that on one occasion Johnson obtained additional employment for him and that in the course of the conversation Johnson said, "I am running gambling houses." (2 R. 351; cf. 3 R. 997.)

Johnson's income tax returns and those of the other defendants and of many of the employees were prepared by the same accountants. Johnson changed accountants for the 1936 and subsequent returns at the time when the other defendants

changed. (2 R. 106-114, 420-454.) The accountant who prepared the 1935 and prior returns testified that in 1932 he told Johnson of a Treasury drive on persons receiving income from illegal gains and suggested that if Johnson had any men or employees it would be well for them to file returns, that he was later called to the Horseshoe where Johnson introduced Sommers as "Meet my man Sommers" and asked the witness to repeat the information about filing returns. (2 R. 419-457.) The witness further testified that at the conversation with Johnson and Sommers, it was stated that Johnson's name was not to appear on the returns as the employer. (2 R. 423.)

Johnson's relative position in the conspiracy was further shown by statements to various witnesses made by the other defendants. Hartigan warned employees not to say they were working for Johnson. (2 R. 355-356.) Sommers told the manager of the Albany Park Currency Exchange that the business was being transferred to the Lawrence Avenue Currency Exchange because Brown was a tenant in their building. (2 R. 477.) Brown described the account in the Lawrence Avenue Currency Exchange, otherwise identified as the Gambling houses account, as the Johnson account and that the source of the funds was Johnson. (2 R. 535-537.) Sommers told a customer at the Horseshoe who requested a loan that he would have to get in touch with the boss, and after telephoning and making the loan he told the customer that

Johnson was the big boss. (3 R. 545-546.) Sommers told customers at a gambling table at the Horseshoe that if they had any complaints they would have to make them to Johnson. (3 R. 567-568, 571.)

No permanent books or records⁷ of gambling profits were kept and the income of the houses was necessarily shown from currency and check transactions at banks and currency exchanges. (2 R. 467-469, 476-499, 503-510, 532-543; 3 R. 552-554, 559-566, 603-605, 606-607, 611-612, 694.) The fact that Johnson's actual income was greatly in excess of income reported was confirmed by the Government's showing that during each of the years in question except 1936, Johnson purchased various properties and made other expenditures aggregating far more than his available resources as evidenced by his admitted assets and reported income. (2 R. 10, 11-13, 56-67, 81-84, 90-92, 122, 140, 142-145, 168-170, 228-232, 260-261, 274, 313, 392-393, 411; 3 R. 976; 4 R. 13-15, 18-27.)

Three of the co-defendants were acquitted, but Johnson and the other respondents were found guilty.⁸ Johnson was sentenced to five years im-

⁷ Although a bookkeeping system was employed in many of the houses, most of the records were systematically destroyed within a few days or weeks after they had been made. (2 R. 178-179, 256-258, 373-374, 412-418, 459, 469; 3 R. 710-711, 767-768, 788, 818-819, 823-827, 849, 885-886, 933-934, 939-941, 948, 995.)⁷

⁸ Johnson, Sommers, Hartigan, Flanagan, and Kelly were found guilty on all five counts; Brown was found guilty only on the third, fourth, and fifth counts.

prisonment and fined \$10,000.⁹ The other respondents were given lesser concurrent sentences and fines. (1 R. 154-162.)

The Circuit Court of Appeals, Judge Evans dissenting, reversed the judgments. The majority opinion appears to base the reversal upon the following considerations:

1. The court held that the entire indictment was void in that it was not returned by a legally constituted grand jury by reason of an allegedly invalid order of continuance. The grand jury was impaneled during the December 1939 term of the District Court of the Eastern Division of the Northern District of Illinois.¹⁰ (1 R. 2, 28, 32.) By order dated January 24, 1940, during the December term, the grand jury was authorized to sit during the February 1940 term to finish investigations begun but not finished during the December term. No question is raised as to the legality of the grand jury as originally impaneled or as continued into the February term. On February 28, 1940, the District Court entered a further order extending

⁹ He was sentenced to imprisonment for five years on each of the first four counts and two years on the fifth count, the terms to run concurrently; he was fined \$10,000 on each count, but with the provision that payment of one \$10,000 fine should discharge all fines (1 R. 154-155).

¹⁰ Section 79, Judicial Code, as amended (U. S. C., Title 28, Sec. 152) provides that the terms of the District Court for the Eastern Division of the Northern District of Illinois shall be held on the first Monday in February, March, April, May, June, July, September, October, and November, and the third Monday in December.

the life of the grand jury into the March term, reading as follows " (1 R. 28-29, 32-33) :

Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois * * * and * * * requests that an order be entered authorizing them, the said Second December, 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished during the said February 1940 Term of Court; * * *

It is Therefore Ordered That the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is here-

" Both the January 24 and the February 28 orders of continuance were based upon Section 284, Judicial Code, as amended by the Act of August 24, 1937, c. 746, 50 Stat. 748 (U. S. C., Title 28, Sec. 421), which provides:

"* * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than three terms. * * *

These provisions were subsequently amended by the Act of April 17, 1940, c. 101, 54 Stat. 110, by changing the words "three terms" to "eighteen months."

by authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations.

The indictment was returned on March 29, 1940, during the March term, and its preamble alleged (1 R. 2):

The Grand Jurors * * * at the December Term * * * having begun but not finished during said December Term of Court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this Court * * * during the February and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term of Court * * *

Johnson filed a motion to quash the indictment (1 R. 28-31) and the other defendants filed a plea in abatement "in the nature of a motion to quash" (1 R. 32-35), in each of which it was charged in substantially identical language that the order continuing the grand jury into the March term was void. The Government moved to strike the plea in abatement (1 R. 43), and thereafter the defendants moved for a rule on the Government to reply to such plea and motion (1 R. 44). The District Court denied the motion for a rule on the Government, overruled the motion to quash, and granted the Government's motion to strike the plea in abatement (1 R. 45-46). The court below, how-

ever, held that the motion to quash and the so-called plea in abatement should have been sustained. In reversing the judgments it held that the order continuing the grand jury into the March term was void, on the ground that it authorized the grand jury to continue investigations begun in the February term whereas under the statute the grand jury could be continued only to complete investigations begun in its original term, i. e., the December term.

2. The court held further that even if the order of continuance were valid, Johnson's motion to quash and the other defendants' plea in abatement alleged facts showing that the grand jury had completed its investigations in February, that it in fact considered new matters during the March term, and that the Government should have been required to answer. The allegedly new matters related to Johnson's 1939 income taxes, the returns for which were filed during March 1940. (1 R. 186-187.)

3. Although the indictment^a itself alleged that the grand jury continued to sit during the February and March terms for the purpose of finishing investigations begun but not finished during the December term (1 R. 2), the court held that such allegations standing alone were insufficient and that it was incumbent upon the Government to offer proof in support thereof: "Failure of proof

with reference to the allegation under discussion is, in our opinion, fatal to the judgment." (1 R. 190.)

4. The court below also ruled that the first four counts of the indictment were duplicitous and inconsistent as to the respondents other than Johnson, in that Johnson was charged with a substantive crime committed on March 15 of each of the years in question whereas the aiders and abettors were charged with a crime consisting of a course of conduct over a period of time. The court held the first four counts were further demurrable since, in its view, the codefendants were charged as accessories both before and after the fact in each count. (1 R. 190-192.)

5. As to the first count, involving the year 1936, the court held that the evidence did not support the charge and that Johnson's motion for a directed verdict should have been allowed. It also held that the motion for a directed verdict on behalf of the co-defendants should have been granted as to the first four counts, since, in its view, there was no evidence that the co-defendants had anything to do with the preparation of Johnson's returns. (1 R. 193-196.)

6. Finally, the court held that the testimony of an expert witness, Internal Revenue Agent Clifford, invaded the province of the jury since the questions relating to Johnson's income and taxes were not hypothetical in form. (1 R. 198-200.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the grand jury was not lawfully constituted in that the order of the District Court extending its sitting to the term at which the indictment was returned was void.

2. In holding that Section 556 of Title 18, United States Code (Section 1025, Revised Statutes, as amended), did not apply to cure any asserted defect in the grand jury proceedings, or any other alleged error or defect occurring in this case.

3. In holding that the demurrers should be sustained as to the fourth count on the ground that the grand jury was only authorized to investigate completed offenses completed at or prior to the original term.

4. In holding that the respondents' motion to quash and plea in abatement were sufficient to require the Government to answer.

5. In holding that the failure of the Government to prove the allegation in the indictment as to the continuance of the grand jury was fatal to the judgment.

6. In holding that the substantive counts of the indictment were demurrable as to the respondents other than Johnson since they were inconsistent and duplicitous in that:

(a) They charged aiding and abetting at times other than the alleged time of the commission of the principal offense by Johnson;

(b) They charged the respondents other than Johnson as accessories both before and after the fact.

7. In holding that directed verdicts for the respondents other than Johnson should have been granted as to the substantive counts on the ground that there was no evidence that these respondents had assisted in the preparation of Johnson's returns or had any knowledge as to their contents, and in holding that a directed verdict should have been granted for Johnson as to the first count.

8. In holding that the testimony of an expert witness for the Government invaded the province of the jury and constituted reversible error.

9. In reversing the judgments of the District Court.¹²

SUMMARY OF ARGUMENT

I

A. The court below erred in holding void the order of February 28, 1940, continuing the grand jury into the March term. Section 421, Title 28, U. S. C. (Sec. 284, of the Judicial Code) permits the District Court to authorize any grand jury to continue to sit after its original term, "solely to

¹² We contend that the court erred in reversing the convictions on every ground, however framed; and we have attempted to enumerate all of them in the foregoing specification of errors. However, since the discursive character of the majority opinion makes it difficult to isolate each ground with precision, the foregoing enumeration is not intended in any way to limit our attack upon the judgments below.

finish investigations begun but not finished by such grand jury". The legislative history and the general purpose of these provisions make clear that they were intended simply to limit the grand jury to a single general subject and to prevent it from continuing to sit for ordinary unrelated matters.

The grand jury herein was impaneled during the December 1939 term which ran through the month of January. On January 24, 1940, its existence was continued into the February 1940 term by an order of undisputed validity. On February 28, 1940 the District Court entered a second order, continuing the grand jury into the March 1940 term, and the indictment herein was returned during the March term. It is that order of February 28 which is here challenged and which the court below held void on the ground that it empowered the grand jury to continue not only the investigations begun at its original term but also any investigations begun at the February term.

We submit that the court misconstrued the order of February 28. The grand jury had no authority to begin, nor is it even suggested that it did begin, any new investigations in February. And, as disclosed by the record as well as by the solemn statement of the grand jury itself in the preamble to the indictment, the investigations herein were begun in the December term. When construed in its appropriate setting, the order of February 28 did not give the grand jury any excessive authority.

Moreover, even if the order did theoretically confer any excessive authority upon the grand jury, this indictment was the product of investigations conducted within permissible limits. Accordingly any possible defect in that order was cured by Sec. 556, Tit. 18, U. S. C. (Sec. 1025 of the Revised Statutes), which provides that "No indictment * * * shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant * * *". In rejecting the application of these provisions the court below relied simply upon *Crain v. United States*, 162 U. S. 625, which has been overruled by this Court on this issue. See also Section 269 of the Judicial Code.

B. The court ruled further that even if the order extending the grand jury into the March term were valid, the grand jury exceeded its authority as to count four and possibly count five to the extent that it dealt with Johnson's 1939 taxes. It held that since the income tax returns for 1939 were filed on March 15, 1940, the grand jury must have begun new "investigations" in March in order to indict with respect to the 1939 taxes. That ruling, however misconceives the meaning of the word "investigations". Congress employed the word, not in its narrow sense of specific offenses, but rather in its usual sense relating to a general inquiry into

a set of facts. Here the grand jury had undertaken to investigate Johnson's financial affairs and his income tax liability. It found a continuous pattern of conduct whereby persons other than Johnson posed as the owners of his gambling houses thereby enabling him to conceal the profits which he derived therefrom. The crime committed with respect to his 1939 taxes was just as much part of the central inquiry as were the crimes relating to the other years. In considering the 1939 taxes the grand jury entered upon no new "investigations" as that word is used in the statute.

C.—Assuming the validity of the order of continuance, the allegations of the motion to quash and plea in abatement were insufficient to raise any further issue of fact relating to the grand jury's compliance with the order. Those preliminary motions alleged no specific facts that were legally sufficient to upset the first three counts, and the allegations as to the fourth and fifth counts dealt only with the fact that the returns for 1939 had been filed on March 15, 1940. But, as indicated above, that fact does not show that the grand jury acted improperly. The District Court correctly disposed of these preliminary motions against the defendants, and the court below erred in holding that the Government should have been required to answer. No specific facts and no facts from which prejudice might be inferred were alleged;

both are fundamental to the sufficiency of preliminary motions.

D. The decision of the court below not only requires the Government to answer the preliminary motions but goes further and imposes upon the Government the extraordinary burden of proving the formal allegations of the indictment as to the continuance of the grand jury. Its decision in this regard is contrary to long established practice that the burden of proof with respect to such preliminary matters is always upon the defendant. And if the court's decision is to be interpreted as imposing that burden upon the Government at the trial on the merits even in the absence of any preliminary motions, it is a radical departure from settled criminal practice.

II

A. The indictment charged Johnson with wilful attempts to evade income taxes as of March 15th of the various years and charged the other defendants with aiding and abetting the attempted evasion over a period of time. The essence of the crime charged against Johnson was the attempt to evade, not the mere filing of a false return. The attempted evasion, therefore, could be aided by acts unconnected with the filing of the false return. This is in accordance with the universally held interpretation of Section 332 of the Criminal Code which defines aiding and abetting. The co-defend-

ants were shown to have performed acts knowingly in furtherance of the common plan for evasion and the verdicts of conviction as to them are supported by the evidence.

The commission of a crime itself and the aiding and abetting of the crime are a single offense and not separate offenses. The dates alleged in the indictment other than the March 15th date are times of aiding and abetting and not times of the commission of separate offenses. The indictment, therefore, was not inconsistent as to the aiders and abettors.

B. Under a proper interpretation and correlation of Section 332 of the Criminal Code, defining aiding and abetting, and Section 333 of the Criminal code, fixing the punishment for accessories after the fact, a defendant who aids and abets the commission of a crime is a principal and his continued participation after the commission of the crime does not reduce him from a principal to an accessory after the fact. Here the aiders and abettors were charged only as principals. They were not prosecuted as accessories after the fact, and the charge to the jury placed no such issue before it. There was in fact no duplicity, and even a theoretical possibility of duplicity could not have prejudiced the defendants in the circumstances of this case.

III

The prosecution proceeded in part on the theory that Johnson was the owner of various gambling

houses and was entitled to all of the income therefrom. The evidence raised sharply defined issues of veracity of witnesses and weight of evidence. Such issues were for the jury to decide and the court below in holding the evidence insufficient to show Johnson's ownership has improperly substituted its views on these questions for the views of the jury.

IV

An expert witness for the prosecution, Clifford, an Internal Revenue Agent, was asked for a computation of net income and tax due from Johnson based upon exhibits previously introduced and upon the other evidence in the record. The court below held that the questions were not hypothetical in form and that the District Court therefore committed prejudicial error in admitting Clifford's testimony. We submit that the testimony was proper.

The fundamental requirement of a hypothetical question is simply that the premises used by the witness as the basis for his conclusion be expressly stated so that the jury may reject the conclusions if it finds that the premises are not true. The form of the hypothetical question rests largely with the discretion of the trial court and the only fixed requirement of form is that the jury be not misled as to the premises used.

The entire line of testimony here made plain that Clifford's conclusions were based on the exhibits and evidence theretofore presented in the trial and

the jury could not have been misled by the form of the questions. Moreover, Clifford was cross examined in exhaustive detail as to the assumptions on which his computation was based. If there lurked any residual doubt as to the basis of Clifford's computation after the direct examination none could have remained after the searching cross examination.

ARGUMENT

I

THE INDICTMENT WAS RETURNED BY A PROPERLY CONSTITUTED GRAND JURY WHICH HAD FULL AUTHORITY TO CHARGE THE DEFENDANTS WITH THE CRIMES SPECIFIED IN ALL FIVE COUNTS

The primary ground of reversal by the court below was that the order of February 28, 1940 extending the life of the grand jury into the March term was void and that therefore the indictment herein, returned on March 29, 1940, was void. Closely interwoven with that ground was the further partial ground that the indictment was void as to counts four and possibly five since those counts involved matters which the grand jury allegedly had no authority to investigate, even if it had been legally continued into the March term. We shall undertake to show that since the grand jury was properly continued into the March term, the indictment as a whole was returned by a legally constituted grand jury; and that the subject matter of counts four and five were within the scope of its investigatory powers. We shall also consider the related matters

dealing with the ruling on the preliminary motions and the holding of the court below that the Government had the burden of proving the allegations in the indictment as to the continuance of the grand jury.

A. THE UNDERLYING STATUTORY PROVISIONS AND THE ORDER OF
FEBRUARY 28, 1940

The grand jury was impaneled at the December 1939 term of court, and therefore had authority to sit throughout the month of January, 1940.¹³ During that term, by an order of undisputed validity that was entered January 24, 1940, the life of the grand jury was continued into the February term. Its existence was further continued into the March term by an order of February 28, 1940, and the indictment was returned on March 29, 1940. The court below held that the second order of continuance was void under Section 421, Tit. 28, U. S. C. (Sec. 284, Judicial Code), and that the indictment was void since the grand jury had no authority to sit during the March term.

1. Section 421, Tit. 28, U. S. C. (Sec. 284, Judicial Code) in so far as material then provided:

A district judge may, upon request of the district attorney or of the grand jury or on

¹³ Pursuant to Section 79 of the Judicial Code (U. S. C., Tit. 28, Sec. 152), terms of court for the Eastern Division of the Northern District of Illinois are begun on the first Monday in February, March, April, May, June, July, September, October, and November, and on the third Monday in December.

his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than three terms.

This sentence was added to the section in 1931. Traditionally, a grand jury's existence terminated at the end of the term of court during which it was impaneled, but even prior to the enactment of this provision it had been held that the district courts could authorize the grand jury to sit beyond the original term. *United States v. Rockefeller*, 221 Fed. 462 (S. D. N. Y.); *Elwell v. United States*, 275 Fed. 775 (C. C. A. 7th), certiorari denied, 257 U. S. 647; and *Johnson v. United States*, 5 F. (2d) 471 (C. C. A. 4th). The correctness of these decisions, however, was questioned, and beginning with 1923, there were regularly introduced in Congress bills authorizing extended sittings for the purpose of permitting the completion by a single grand jury of important investigations, particularly of anti-trust investigations, S. Rep. No. 1189, 67th Cong., 4th Sess.; H. Rep. No. 366, 68th Cong., 1st Sess.; S. Rep. No. 1401, 70th Cong., 2d Sess. The bills as introduced used the phrase "business unfinished" rather than the word "investigations" as added by the Senate and finally enacted in 1931. This amendment was stated in the Senate Committee Report to be simply a clarifying

one. S. Rep. No. 877, 71st Cong., 2d Sess. In 1940 the sentence in question was amended to extend the period during which the grand jury could sit from three terms to eighteen months in order to permit the conclusion by a single grand jury of complex investigations in judicial districts in which the term was limited to a month's duration. H. Rep. No. 1747, 76th Cong., 3d Sess. No express reason for the limitation on extended sittings to "investigations" begun at the preceding term appears in the legislative history, but the history outlined and the general purpose of the entire provision make clear that the purpose was to limit the grand jury to the general subject matter already under consideration and to prevent it from continuing to sit for ordinary unrelated matters.

2. The disputed order of February 28, 1940 reads as follows (1 R. 28-29):

Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, the said Second December, 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940

Terms of this Court, and which said investigations cannot be finished during the said February 1940 Term of Court; and the Court being fully advised in the premises,

It Is Therefore Ordered That the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations.

The majority of the court below held that this order was invalid since it authorized the grand jury to sit during March for the purpose of finishing investigations begun in February, whereas under the statute, it could be authorized only to finish investigations begun during its original term, i. e., the December 1939 Term.

We submit that, fairly construed, the order never contemplated that any new investigations had been begun in February that were to be continued into March; that no new investigations had in fact been begun in February; that neither respondents nor the court below have even suggested that any new investigations were begun in February; and that, as disclosed by the preamble to the indictment, the grand jury itself understood its authority as extending only to finish the investigations begun at the December 1939 term, its original term.

The first order of continuance empowered the grand jury to sit during the February term to finish investigations begun in the December term. The order is of undisputed validity, and under it

the grand jury had no authority to commence any new investigations in February. Moreover, there is no suggestion that the grand jury in fact undertook new investigations in February, thereby exceeding its authority under the first order. That the investigations¹⁴ in question were begun during the original December term is affirmatively disclosed in this record (3 R. 614-692), as well as in *United States v. Brown*, 116 F. (2d) 455, 456 (C. C. A. 7th), which involved a contempt proceeding against one of the respondents herein with respect to testimony before this very grand jury, and which revealed that the investigations leading up to the indictment herein were commenced during the December term.

It is in this setting that the February 28 order must be interpreted. The second paragraph of the order authorized the grand jury "to continue to sit during the March 1940 term of Court for the purpose of finishing said investigations." The reference to "said investigations" relates to the first paragraph in which the grand jury asks au-

¹⁴ The contention that as to the fourth count (evasion of 1939 taxes and filing of false returns on March 15, 1940), the investigations could not possibly have been begun during the December 1939 term will be considered *infra*, pp. 34-36. We shall there show that the grand jury's general inquiry into Johnson's financial affairs was a single "investigation" within the meaning of the statute, so that it was not entering upon new fields when it considered Johnson's 1939 taxes. Moreover, whatever may be said of that count cannot affect the first three counts.

thority to continue to sit during the **March** term "to finish investigations begun but not finished by said Grand Jury during the said **December 1939** and the said **February 1940** terms of this Court, and which said investigations cannot be finished during the said **February 1940** term of Court * * *." When considered against the background of the request for the extension, it is plain that neither the request nor the order contemplated that the grand jury would have any authority to go beyond the investigations already properly commenced in the **December** term and continued into the **February** term. That the grand jury so understood its authority is confirmed by the preamble to the indictment where it stated ¹⁵ (1 R. 2):

The Grand Jurors * * * at the **December Term** * * * having begun but not finished during said **December Term** of Court among other thing an investigation of the matters charged in this indictment, and having continued to sit by order of this Court * * * during the **February** and

¹⁵ The requirement of secrecy of grand jury proceedings and the strong presumption of legality of grand jury action require that effect be given to the solemn statement of this grand jury in the indictment that it continued to sit during the February and March terms "for the purpose of finishing investigations begun but not finished during said December Term." (1 R. 2.) Cf. *Skidmore v. United States*, 123 F. (2d) 604 (C. C. A. 7th), certiorari denied, February 2, 1942, No. 813, this Term; *Reuben v. United States*, 86 F. (2d) 464 (C. C. A. 7th), certiorari denied, 300 U. S. 671; *Glasser v. United States*, Nos. 30-32 this Term, decided January 19, 1942.

March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term of Court * * *.

Judge Evans, in his dissent, concluded that a fair reading of the order in its proper setting left no basis for attack upon its validity. He thus interpreted the disputed language, "during the December * * * and February Terms" as modifying the verb "finished" rather than the verb "begun", and read the verb "begun", in the circumstances surrounding the order, as meaning "theretofore begun" in the December term. Indeed, a comma placed after the word "begun" would probably go far towards removing any uncertainty in this respect.¹⁶

3. If it should be concluded, however, that there is doubt as to the meaning of the February 28 order as a result of its inartistic draftsmanship, or that it may conceivably be construed so as to have conferred excessive power upon the grand jury, then any such defect would be rendered harmless by Section 556, Title 18, U. S. C. (Section 1025 of the Revised Statutes) which reads as follows:

¹⁶ Comparison of the present order with orders held valid in similar circumstances points to its validity. For example, in *United States v. Parker*, 103 F. (2d) 857 (C. C. A. 3d), certiorari denied, 307 U. S. 642, an order extending the sitting of a grand jury was held valid although it provided simply that the grand jury remain in service until the further order of the court. See also *United States v. Borden Co.*, 28 F. Supp. 177 (N. D. Ill.), reversed in part on other grounds, 308 U. S. 188; *Johnson v. United States*, 5 F. (2d) 471 (C. C. A. 4th).

No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, * * *.

Compare Section 269 of the Judicial Code (Sec. 391, Tit. 28, U. S. C.) which directs the Federal courts, in all cases, civil or criminal, to "give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties". See Appendix, *infra*, p. 60.

The Circuit Court of Appeals refused to apply Section 556, stating without further elaboration that "the question presented is one of substance and not of form" (1 R. 187), and citing *Crain v. United States*, 162 U. S. 625, which has been expressly overruled on this point. *Garland v. Washington*, 232 U. S. 642.¹⁷

The application of the foregoing statutory provisions is particularly appropriate here, where no prejudice whatever resulted to the defendants.

¹⁷ See also *Badders v. United States*, 240 U. S. 391, 395; *Berger v. United States*, 295 U. S. 78; *Breese v. United States*, 226 U. S. 1; *Rice v. United States*, 35 F. (2d) 689 (C. C. A. 2d); *United States v. Austin-Bagley Corp.*, 31 F. (2d) 229 (C. C. A. 2d); *Williams v. United States*, 275 Fed. 129 (C. C. A. 9th).

The February 28 order is attacked only because it allegedly authorized the grand jury to continue into March any investigations that it already illegally commenced in February. But neither respondents nor the court below have suggested that any such illegal investigations were commenced in February, and whatever excessive authority might otherwise be read into the February 28 order was plainly not utilized by the grand jury. The February 28 order was at most ambiguous, and exemplifies the clearest kind of "defect" which the foregoing statutory provisions were intended to cure.

Moreover, even if the February 28 order be construed to authorize the continuance of investigations begun at the February term, that excessive authorization was at best a nullity and there remained a valid order permitting the grand jury to finish during the March term the investigations which it had undertaken during the December term. The indictment herein was in fact the product of investigations commenced during the December term, and the alleged invalid portions of the February 28 order may be put aside as severable in accord with the familiar principle that judgments and orders may be sustained in so far as valid. Cf. *Semmes v. United States*, 91 U. S. 21; *Ballew v. United States*, 160 U. S. 187; *Connally v. Louisville & N. R. Co.*, 297 Fed. 180 (C. C. A. 5th), certiorari denied, 268 U. S. 693.

B. THE GRAND JURY HAD AUTHORITY TO RETURN COUNT FOUR AND FIVE. THE CHARGES WITH RESPECT TO JOHNSON'S 1939 TAXES GREW OUT OF THE SAME "INVESTIGATIONS" THAT PRODUCED THE CHARGES RELATING TO HIS EARLIER TAXES

The court held further that even if the February 28 order were not void and even if the grand jury were properly continued, counts four and possibly five were nevertheless void because, as to them, the grand jury had engaged in new investigations. In short, it held that the crimes relating to Johnson's 1939 taxes could not have been committed prior to the filing of Johnson's return on March 15, 1940, and that a new "investigation" was necessarily initiated during the March term in order to include the 1939 taxes within the indictment.¹⁸ It held that in authorizing the continuance of a grand jury to finish "investigations" already begun, Section 284 of the Judicial Code, *supra*, pp. 25-26, used the word "investigations" as synonymous with offenses. (1 R. 186.) This interpretation of Section 284 with respect to Johnson's 1939 taxes permeated the court's entire treatment of the question of the legality of the indictment as a whole and of the propriety of the continued existence of the grand jury.

¹⁸ Count four dealt with Johnson's evasion of his 1939 taxes, whereas count five charged a conspiracy with respect to his taxes for the years 1936-1939 inclusive. It may well be that count five is valid, even under the theory of the court below, for acts of the conspiracy charged even with respect to the 1939 taxes, occurred during the year 1939, prior to the February and March 1940 terms.

That unduly narrow interpretation of "investigations" is inconsistent with the firmly established concept of a grand jury's functions and powers. That its traditional functions involve a broad field of inquiry was graphically outlined by this Court in *Blair v. United States*, 250 U. S. 273, 282:

It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime. As has been said before, the identity of the offender, and the precise nature of the offense, if there be one, normally are developed at the conclusion of the grand jury's labors, not at the beginning.

See also *Hale v. Henkel*, 201 U. S. 43; *United States v. Thompson*, 251 U. S. 407; *Cobbledick v. United States*, 309 U. S. 323; *In re Black*, 47 F. (2d) 542 (C. C. A. 2d); *Shushan v. United States*, 117 F. (2d) 110 (C. C. A. 5th), certiorari denied, 313 U. S. 574.

The ruling of the court below substantially impedes the carrying out of an essential function of grand juries, the thorough investigation of complex cases. Under the court's ruling, to insure the legality of an indictment returned other than in the original term, the resulting indictments, including the precise issues and particular defendants, must be anticipated and preliminary investi-

gation begun during the original term as to each crime eventually charged. But, as vividly pointed out in Judge Evans' dissenting opinion (1 R. 207-208), a comprehensive investigation of an involved situation may ultimately reveal crimes wholly unanticipated at the beginning of the grand jury's deliberations. Plainly, Congress never intended to curtail the power of the grand jury to indict with respect to all crimes growing out of the central inquiry.

These considerations are particularly relevant here. The grand jury had undertaken an extensive investigation of the financial affairs and tax liability of Johnson. As the investigation progressed there appeared a pattern of conduct whereby persons other than Johnson posed as the owners of his gambling houses. The grand jury was led to believe that Johnson had received large amounts of unreported income from these enterprises. The pattern was a recurring one; it continued through the year 1939 as before, and that continuous conduct during the year 1939 finally culminated in the filing of the false return on March 15, 1940. Surely, this was no new field of inquiry. It was simply another aspect of the same "investigation" growing out of the same central set of facts.

C. THE RULING ON THE PRELIMINARY MOTIONS

The court further held that even if the second order of continuance were valid, Johnson's motion to quash and the other defendants' plea in abate-

ment alleged sufficient facts showing the failure of the grand jury to comply with the order so as to require the Government to answer and that, therefore, the overruling of the motion to quash and striking of the plea in abatement were reversible error. (1 R. 186-188.) The allegations on which the court relied were described by it as follows (1 R. 186):

As pointed out, the motion as to the first, second, and third counts expressly averred, as a matter of fact, that the investigations of the offenses charged in those counts "were finished and concluded at the February 1940 Term of the Said Grand Jury," and as to counts four and five, the averment was made that the investigation as to offenses therein charged was not "begun at the December 1939 Term of court" and was "first begun at said March 1940 Term of court." * * *

These bare allegations are in substance the only allegations in the preliminary motions other than those relating to the validity of the order of continuance. The motion to quash contains a mere verification by the respondent Johnson that the allegations of fact therein contained are true. There also is a certification by one of his attorneys that he has read the indictment and the orders referred to and that from such examination he is of the opinion that the motion to quash is well founded in fact and in law. (1 R. 31.) The plea in abatement filed on behalf of the other respondents is signed by them, without verification of any kind. (1 R. 32-

35.) Neither the motion to quash nor the plea in abatement is supported by any separate affidavit or showing of facts. Both pleadings ask for judgment of the court quashing the indictment (1 R. 31, 35), and contain no offer of proof or request for opportunity to offer proof in support thereof.

The allegations as to the first three counts merely stated that the grand jury had already finished its investigations in the February term since it had returned indictments on these very matters on March 1, 1940. (1 R. 30, 34.) But the court below itself was satisfied that this contention did not raise any issue which could operate to the defendants' advantage even if the facts alleged are taken as true, for the court plainly stated (1 R. 185):

While the return of an indictment might be an indication that the investigation was finished, we do not think it is conclusive. We see no reason why a Grand Jury is precluded from continuing an investigation after the return of an indictment, and subsequently again indict for the same offense.

As to the fourth and fifth counts, the preliminary motions alleged baldly that the investigations were begun in the March term. This was only an assertion of an ultimate conclusion of fact and no specific facts justifying the conclusion were alleged. The allegation stems from respondents' contention that since the 1939 returns were not filed until March 15, 1940 the investigations necessarily com-

menced during the March 1940 term. But, as we have shown *supra*, pp. 34-36, that conclusion rests upon an erroneous interpretation of the word "investigations", and therefore raises merely a question of law. At best, the preliminary motions alleged no specific facts but only ultimate conclusions. No allegations of fact from which prejudice might be inferred were made. Both are fundamental to the sufficiency of preliminary motions. *Hyde v. United States*, 225 U. S. 347; *Agnew v. United States*, 165 U. S. 36; *Shushan v. United States*, 117 F. (2d) 110 (C. C. A. 5th), certiorari denied, 313 U. S. 574; *United States v. Parker*, 103 F. (2d) 857 (C. C. A. 3d), certiorari denied, 307 U. S. 642; *Olmstead v. United States*, 19 F. (2d) 842 (C. C. A. 9th), affirmed, 277 U. S. 438. See also *United States v. McGuire*, 64 F. (2d) 485 (C. C. A. 2d), certiorari denied, 290 U. S. 645; *Colbeck v. United States*, 10 F. (2d) 401 (C. C. A. 7th), certiorari denied, *sub. nom. Hackethal v. United States*, 270 U. S. 663.¹⁹

¹⁹ The court's decision on the motion to quash likewise fails to give effect to the established principle that a motion to quash is largely addressed to the discretion of the trial court and will not be reviewed except on a showing of an abuse of discretion. *Durland v. United States*, 161 U. S. 306; *United States v. Hamilton*, 109 U. S. 63; *Sherman v. United States*, 80 F. (2d) 629 (C. C. A. 4th); *Sutton v. United States*, 79 F. (2d) 863 (C. C. A. 9th); *Hill v. United States*, 15 F. (2d) 14 (C. C. A. 8th).

Moreover, there is serious doubt whether the ruling of the District Court on the plea in abatement was reviewable at all by the Circuit Court of Appeals. Section 879, Title 28,

The ruling of the court below on the preliminary motions would seem to permit any defendant to question the propriety of the grand jury's proceedings simply by a bare allegation of a conclusion based only on guess and conceived in the absence of any knowledge of impropriety on the part of the grand jury. The court's ruling opens the door to dilatory tactics and hopeful delvings into grand jury proceedings, without conferring any compensating meritorious benefits upon the accused. The inevitable result would be unjustifiable delay, violation of the secrecy of grand jury proceedings and extensive fishing expeditions which have been so often condemned.

D. THE GOVERNMENT DOES NOT HAVE THE BURDEN OF PROVING ALLEGATIONS IN THE INDICTMENT AS TO THE CONTINUANCE OF THE GRAND JURY

The decision of the court below not only requires the Government to answer preliminary motions of

U. S. C. (Section 1011, Revised Statutes) unambiguously provides:

There shall be no reversal in the Supreme Court or in a circuit court of appeals upon a writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact.

And these provisions have been relied upon in at least three cases as a bar to appellate review of the trial court's rulings on pleas in abatement in criminal cases. *Mounday v. United States*, 225 Fed. 965 (C. C. A. 8th), certiorari denied, 239 U. S. 645; *Biemer v. United States*, 54 F. (2d) 1045 (C. C. A. 7th), certiorari denied, 286 U. S. 566; *Luxenberg v. United States*, 45 F. (2d) 497 (C. C. A. 4th), certiorari denied, 283 U. S. 820.

the nature here involved, but goes further and unconditionally imposes upon the Government the extraordinary burden of proving the formal allegations of the indictment as to the continuance of the grand jury. In the opinion of the court, "failure to prove the allegation with reference to the authority of the Grand Jury to act is likewise fatal". (1 R. 189.) If this be correct it is incumbent upon the Government to prove when the investigation as to each count of an indictment began, what information was before the grand jury at various times and whether its final actions were within the boundaries of the original investigation. The mere statement of this contention bears its own refutation. Proof of such matters should no more be required than proof that the grand jurors are qualified "Grand Jurors for the United States" or were "duly empaneled and sworn in the District Court", which also are preliminary averments of the indictment. (1 R. 2.)

Of course, if any of those formal allegations are properly attacked by the defendant prior to trial by appropriate preliminary motions containing specific allegations of fact that challenge those formal allegations of the indictment, then the defendant may be entitled to a preliminary hearing on those issues. But even in that situation the burden is upon the defendant to prove any alleged illegality of the grand jury proceedings. *Mul-loney v. United States*, 79 F. (2d) 566 (C. C. A. 1st), certiorari denied, 296 U. S. 658; *Cravens v.*

United States, 62 F. (2d) 261 (C. C. A. 8th), certiorari denied, 289 U. S. 733. Cf. *Glasser v. United States*, Nos. 30-32, this Term, decided January 19, 1942.

The ruling of the court below, however, not only imposes the burden on the Government in that situation, but apparently goes much further. It seems to require the Government to prove those allegations at the trial on the merits, just as it must prove venue (1 R. 189), irrespective of whether the issue is raised by the defendant. Such a sweeping rule would be a radical departure from established practice, for it has long been settled that where no specific issue is raised as to the legality of the grand jury the customary formal allegation of the return of the indictment is conclusive, and the objection is to be regarded as waived. Cf. *United States v. Gale*, 109 U. S. 65; *Agnew v. United States*, 165 U. S. 36; *Powers v. United States*, 223 U. S. 303; *Hyde v. United States*, 225 U. S. 347; *Carroll v. United States*, 16 F. (2d) 951, 955 (C. C. A. 2d), certiorari denied, 273 U. S. 763.

The havoc which will be worked by the holding of the court below on this issue if unreversed, is readily apparent. It will place new and unnecessary obstacles in the way of nearly every prosecution, and will seriously impede the effective administration of the criminal laws.

II

**THE AIDERS AND ABETTORS WERE PROPERLY CHARGED
IN THE INDICTMENT AND THE EVIDENCE SUPPORTS
THEIR CONVICTIONS**

The indictment in each of the first four counts charged the respondent Johnson with wilful attempts to evade his income taxes for the calendar years 1936 to 1939, inclusive, and alleged as a means thereof that Johnson filed a false income tax return on March 15 of each succeeding year. Each count alleged as a further means of evasion that Johnson concealed his income, the sources of the income and his books reflecting the income and its sources. The first four counts further alleged that "during the calendar year * * * and up to and including March 15 [of the succeeding year] * * *, and continuously thereafter up to and including the date of the filing of this indictment, * * * [the other defendants] well knowing all the premises aforesaid, did unlawfully, feloniously, wilfully and knowingly did, abet, conceal,² induce, and procure * * * Johnson * * * to attempt in the manner aforesaid to evade and defeat the income tax aforesaid, * * * by the means

² The statutory language for aiding and abetting is "aids, abets, counsels, commands, induces or procures". (Sec. 332, Criminal Code; U. S. C., Title 18, Sec. 550.) It would appear that the pleader here intended to charge aiding and abetting in the statutory language and that the use of the word "conceal" in the indictment rather than the statutory word "counsel" was a clerical error.

and in the manner aforesaid, * * *". (1 R. 5-6, 9, 12-13, 16.)

The theory of the prosecution was that the respondents other than Johnson aided and abetted his attempted evasion of income taxes by operating gambling houses and a currency exchange in a manner so as to conceal Johnson's financial interest therein and his income therefrom, by failing to keep books and records of the gambling houses for the purpose of concealing Johnson's income, by converting the income of the houses into cash so that the income might be concealed, and by filing false personal income tax returns and social security tax returns for the same purpose. (1 R. 73-108.)

The Circuit Court of Appeals held that a demurrer to the first four counts of the indictment on behalf of the defendants other than Johnson, should have been sustained on the ground of inconsistency as well as duplicity. It held that each of those four counts was inconsistent in that Johnson was charged with a crime committed on March 15 of each year whereas the other defendants were charged with offenses extending over a period of years. (1 R. 191.) And it held further that each of those counts was duplicitous since the co-defendants were charged with conduct both before and after March 15 of each year and were therefore charged in the same count both as accessories before and after the fact. (1 R. 191-192.) The court also ruled that the co-defendants' motions for directed verdicts should have been

granted since it found that there was no evidence that the co-defendants had anything to do with the preparation of Johnson's returns. (1 R. 195-196.)

A. Underlying the various rulings of the court with respect to the co-defendants is its misconception of the crime that was charged against Johnson and its erroneous treatment of Section 332 of the Criminal Code dealing with aiders and abettors. It erroneously assumed that the first four counts simply charged Johnson with filing false returns on March 15 of each of the years involved. But Johnson was indicted under Section 145 (b) of the Revenue Acts of 1936, 1938, and the Internal Revenue Code, and the essence of the crime defined in Section 145 (b) is the attempt to evade income taxes in any manner, not merely by the filing of false returns. *United States v. Ragen*, Nos. 54-56, this Term, decided January 5, 1942; *Emmich v. United States*, 298 Fed. 5 (C. C. A. 6th), certiorari denied, 266 U. S. 608; *United States v. Miro*, 60 F. (2d) 58 (C. C. A. 2d). The filing of a false return is only one means of attempted evasion, which may mark the consummation of the crime in point of time. The attempt to evade may be in any manner and the crime may be committed as well by filing an amended return (*Levy v. United States*, 271 Fed. 942 (C. C. A. 2d)) or by wilfully failing to file any return (*United States v. Miro*, *supra*).

In these circumstances, it is plain that the aiders and abettors were not charged with offenses that

were inconsistent with the crimes attributed to the primary defendant. It was not necessary that they join with him in the very acts of preparing or filing the false returns. It was sufficient that they collaborated with him in a course of conduct that made possible the filing of those false returns. There was, therefore, no inconsistency, and for the same reason there was no basis for the directed verdict, since it was not necessary to prove that the co-defendants had participated in the actual preparation or filing of Johnson's returns.

' The aiders and abettors were made principals by Section 332 of the Criminal Code (U. S. C., Tit. 18, Sec. 550), Appendix, *infra*, p. 60, and it is clear from the underlying theory of those provisions that the attempted tax evasion may be aided by acts other than assisting in the actual filing of the false returns. Thus in *Jin Fuey Moy v. United States*, 254 U. S. 189, this Court held that a doctor was guilty of abetting the illegal sale of narcotics, where he knowingly issued a prescription for the drug. To the same effect are *Silkworth v. United States*, 10 F. (2d) 711 (C. C. A. 2d), certiorari denied, 271 U. S. 664; *Reinstein v. United States*, 282 Fed. 214 (C. C. A. 2d), certiorari denied, 260 U. S. 722; *Collins v. United States*, 20 F. (2d) 574 (C. C. A. 8th); *Smith v. United States*, 24 F. (2d) 907 (C. C. A. 5th); *Johnson v. United States*, 62 F. (2d) 32 (C. C. A. 9th); *Schrader v. United States*, 94 F. (2d) 926 (C. C. A. 8th).

These decisions illustrate the universal interpretation of Section 332 that any act in furtherance of the criminal plan, however insignificant, made with the knowledge of and to carry out the criminal purpose, renders the actor an aider and abetter. Here the co-defendants knowingly performed numerous acts in furtherance of the criminal plan. The trial judge correctly instructed the jury as to the necessity for such conscious participation in the criminal plan on the part of the aiders and abettors (3 R. 1017) and the verdicts are fully supported by the evidence. See Statement, *supra*, pp. 4-10.

Acts constituting a crime and acts which aid and abet the crime together constitute but a single crime. *Skelly v. United States*, 75 F. (2d) 483 (C. C. A. 10th). Aiding and abetting does not constitute a separate offense apart from the crime committed by the principal actor. A reading of the instant indictment leaves no doubt that as to each of the substantive counts a single crime of attempted evasion was charged and that the consummation of the crime was alleged to have occurred upon the filing of the returns on March 15. The other dates or times alleged are simply the dates on which acts of aiding and abetting were committed. They are not times at which separate crimes were committed. As has been shown, an attempt to evade may be aided and abetted by acts committed at times other than the filing of the return, and

the substantive counts of the indictment are, therefore, not inconsistent.²¹

B. In ruling that a defendant may not be charged in the same count of an indictment as an accessory both before and after the fact, the court below has further misinterpreted Section 332 of the Criminal Code. Under this section a person who aids and abets the commission of a crime is declared to be a principal, and he is punishable as a principal. His continued participation in the criminal plan after the commission of the crime does not make him any the less a principal. Section 333 of the Criminal Code U. S. C., Title 18, Sec. 551, (Appendix, *infra*), providing a penalty for accessories after the fact of "one-half the longest term of imprisonment * * * prescribed for the punishment of the principal" can have no application. *Madigan v. United States*, 23 F. (2d) 180 (C. C. A. 8th). See also *Skelly v. United States*, *supra*; and cf. *Smith v. United States*, *supra*; *Collins v. United States*, *supra*.

²¹ Further it is established that the indictment need contain no charge as to aiding and abetting, but may charge the accessory directly as a principal. *Alexander v. United States*, 95 F. (2d) 873 (C. C. A. 8th), certiorari denied, 305 U. S. 637; *O'Brien v. United States*, 25 F. (2d) 90 (C. C. A. 7th). If aiding and abetting is alleged directly, the indictment need not allege the time of such aiding and abetting. *Barron v. United States*, 5 F. (2d) 799 (C. C. A. 1st); *Di Preta v. United States*, 273 Fed. 73 (C. C. A. 2d). Under these decisions an allegation of time of aiding and abetting becomes surplusage and as such may be disregarded. Cf. *Glasser v. United States*, Nos. 30-32, this Term, decided January 19, 1942; *Coffin v. United States*, 162 U. S. 664.

The instant indictment charges aiding and abetting continuously both before and after the commission of the crime. Given a proper interpretation of Section 332 and proper correlation of Sections 332 and 333, it is clear that the co-defendants are charged *only as principals* in single crimes and that there can be no duplicity. The prosecution did not rely upon Section 333 in any manner. Neither did the District Court in charging the jury or imposing sentence. At no point in the prosecution or trial of these cases was there any suggestion that the co-defendants were being prosecuted or tried as accessories after the fact, and the charge to the jury placed no such issue before it. Accordingly, even if there were a theoretical possibility of spelling out a philosophic duplicity in the first four counts, it never became a reality and the defendants were not prejudiced in any manner. Cf. *Berger v. United States*, 295 U. S. 78.

III

THE ENTIRE VERDICT AS TO THE RESPONDENT JOHNSON
IS AMPLY SUPPORTED BY THE EVIDENCE

The Circuit Court of Appeals in reviewing the evidence noted that the prosecution proceeded on two theories; first, that Johnson was the owner of all of the gambling houses in question and was entitled to all of the income therefrom, and, second, that Johnson's expenditures during the years in question exceeded his prior available resources plus

his reported income. As to the ownership theory the court held that the evidence at best disclosed simply that Johnson had an interest in the gambling houses, that there was no proof that Johnson received all of the income of the houses and to charge him with income in excess of the amounts reported was to indulge in mere speculation. As to the expenditure theory, the court held that the evidence supported the verdict as to all counts except the first which involved the calendar year 1936. (1 R. 193-195.)

The evidence as hereinbefore outlined in the Statement, however, contains direct testimony of numerous acts of ownership and control of the gambling houses by Johnson. Income of the houses was sufficiently shown by the only possible means by records of banking and currency exchange transactions. The defendants who testified denied ownership in Johnson and controverted much of the testimony of Government witnesses. The defendants likewise introduced evidence to create an inference of ownership in others than Johnson. As a result there were created sharply defined issues of veracity of witnesses and weight of evidence. Such issues are for the jury to decide and the court below has improperly substituted its views on these questions for the views of the jury. *Barton v. United States*, 202 U. S. 344; *United States v. Brown*, 116 F. (2d) 455 (C. C. A. 7th); *United States v. Mann*, 108 F. (2d) 354 (C. C. A. 7th). As was pointed out by Judge

Evans, there was substantial evidence of Johnson's ownership of the gambling houses and the jury necessarily found that the income therefrom belonged to Johnson by virtue of that ownership. (1 R. 217-219.) Proof of ownership of a business is a sufficient basis from which to charge the owner with the income therefrom. *United States v. Wexler*, 79 F. (2d) 526 (C. C. A. 2d), certiorari denied, 297 U. S. 703.

Moreover, the court erred in assuming that the so-called "ownership" and "expenditure" theories were wholly independent of each other. They were not. Each gave support to the other. The showing that Johnson had expended large amounts of money in excess of his stated resources fortified the conclusion that he was the owner of the gambling houses with which he had been identified. And the evidence of his participation in the affairs of the gambling houses made reasonable the conclusion that his large expenditures were made from income that was derived from his ownership of the gambling enterprises. Cf. *Gleckman v. United States*, 80 F. (2d) 394 (C. C. A. 8th), certiorari denied, 297 U. S. 709. It was therefore not fatal that the expenditures in 1936 did not exceed his admitted resources; for he may nevertheless be charged with having received income from the gambling houses, the ownership of which he unsuccessfully denied.

As to the fifth or conspiracy count, all members of the court below agreed that the evidence was

sufficient to present a jury question as to all defendants. (1 R. 196, 217-219.)

IV

THE EXAMINATION OF THE EXPERT WITNESS CLIFFORD WAS PROPER AND DID NOT CONSTITUTE REVERSIBLE ERROR

Frank J. Clifford, an Internal Revenue Agent, was called for the prosecution near the end of the Government's case and was qualified as an expert accountant. He first testified directly as to the results of his examination of Johnson's income tax returns and books and records and further as to statements of Johnson made to him during a number of interviews. (4 R. 5-10.) A list of exhibits in evidence was then enumerated by the examining attorney and Clifford was asked as to a computation of Johnson's expenditures during the years in question. (4 R. 13-14.) Thereafter the following transpired (4 R. 15):

MR. HURLEY. Q. Now, Mr. Clifford, with the exhibits just a moment ago enumerated, and the other evidence in the record, have you made a computation to determine the total amount of gross income of the defendant Johnson for the calendar year 1936?

* * * * *

THE WITNESS. A. Yes.

Q. What is the amount, from your computation, of the gross income of the defendant

Johnson for the calendar year 1936, according to your computation?

* * * * *

[Objection.]

The COURT. You are making reference to those exhibits and the evidence in the record?

Mr. HURLEY. He used those as a basis for his computation.

* * * * *

The WITNESS. A. \$547,942.38.

(The witness next explained that the amount given was net and not gross income.)

The examiner then asked the following questions (4 R. 16):

Q. Are you able to state the amount of tax still due by the defendant Johnson to the United States for the calendar year 1936, after allowing credit for the amount of tax shown on defendant's tax return for the year as shown by Government's Exhibit R-10, in evidence?

A. Yes, sir.

Q. And what is the total amount of tax still due the United States, according to your computation, for the year 1936?

Objection was again made and overruled and the witness gave an amount in reply to the last question. (4 R. 16.) Identical questions were then asked as to each of the years 1937, 1938 and 1939. At the end of this interrogation the witness was cross examined in exhaustive detail concerning the

assumptions on which his computation was based. (4 R. 18-45, 46-52.)

The Circuit Court of Appeals held that the questions above quoted did not contain any assumption or hypothesis, that the testimony amounted to a weighing of controverted issues and hence invaded the province of the jury and that it was so prejudicial as to require a reversal.²² (1 R. 198-200.)

The foundation for the use of hypothetical questions is simply that the premises used by the witness as the basis of his conclusion be expressly stated, so that the jury may reject the conclusion if it finds that the premises are not true. II Wigmore on Evidence (3d ed.), Sec. 672. The form and scope of the hypothetical question, including the particularization of the premises used, rest largely with the discretion of the trial court. *Travelers Ins. Co. v. Drake*, 89 F. (2d) 47 (C. C. A. 9th); *Metropolitan Life Ins. Co. v. Armstrong*, 85 F. (2d) 187 (C. C. A. 8th); *New York Life Ins. Co. v. Doerksen*, 75 F. (2d) 96 (C. C. A. 10th); *Guzik v. United States*, 54 F. (2d) 618 (C. C. A. 7th), certiorari denied, 285 U. S. 545; II Wigmore, *supra*, Secs. 681, 683. The one fixed requirement of the form of the question is that the jury shall

²² The court also appeared to stress the fact that many of Clifford's statements were "volunteered" and were not made in response to questions. (1 R. 198-200.) Its error in this respect was called to its attention in a petition for rehearing, and it thereafter corrected its opinion without, however, altering its ultimate conclusions. (1 R. 231.)

not be misled as to the premises used. "The question need only be substantially, not in exact form, hypothetical." II Wigmore, *supra*, Sec. 683, p. 811. There is no magic in the use of the word "assume".

The witness here was asked for a computation based on specified exhibits and the evidence in the record. The exhibits named contained almost all of the evidence as to amounts of income. The other evidence in the record at the time of the examination in question was that of the prosecution and consisted almost solely of testimony directed toward showing that Johnson was the owner of the various gambling houses. The witness' testimony here was simply an arithmetical computation made on the assumption that certain items were Johnson's income. Cf. *Guzik v. United States, supra*. As was pointed out in the dissenting opinion (1 R. 215-216), the entire line of testimony made unmistakably clear that Clifford's conclusions were based on the exhibits and the evidence theretofore presented in the trial and the jury could not possibly have been misled by the form of the questions. The trial judge expressly asked for the premises upon which the requested computation was to be based (4 R. 15) and his action thereafter in permitting the examination would hardly appear to amount to an abuse of discretion.

The alleged vice in Clifford's testimony is that it attributed to Johnson items of income on which the evidence was conflicting. Thus the court and the respondents both assert that the witness has thereby decided controverted issues which are for the jury to decide. But it has heretofore appeared to be unquestioned, and necessarily so, that an expert may be asked for an opinion which is based only on evidence presented by the proponent and that the question need not include premises based on facts or theories presented by the opponent. *Metropolitan Life Ins. Co. v. Armstrong*, *supra*; *New York Life Ins. Co. v. Doerksen*, *supra*; *Guzik v. United States*, *supra*; *Dunagan v. Appalachian Power Co.*, 33 F. (2d) 876 (C. C. A. 4th), certiorari denied, 280 U. S. 606; *Laughlin v. Christensen*, 1 F. (2d) 215 (C. C. A. 8th); *City of Port Washington v. Thacker*, 245 Fed. 94 (C. C. A. 7th); II Wigmore, *supra*, Sec. 682. This is all that has occurred here; Clifford in making his computation has assumed facts constituting the Government's theory of the case and has not used the respondents' theory as his basis. This is in essence the objection of the respondents. They make no contention, and indeed could make none, that there is no evidence in the record on which Clifford's assumptions were based. No more is required of a hypothetical question. *Travelers Ins. Co. v. Drake*, *supra*.

The fallacious cliché, adopted in the opinion below, that the testimony of the expert witness invades the province of the jury has been sharply criticized. II Wigmore, *supra*, Sec. 673. Cf. *Guzik v. United States, supra*; *Dunagan v. Appalachian Power Co., supra*; *New York Cent. R. Co. v. Johnson*, 27 F. (2d) 699 (C. C. A. 8th), reversed on other grounds, 279 U. S. 310. As Wigmore points out, the witness could not usurp the jury's function if he would, for the jury may reject the witness' premises and thereby reject his conclusion, or may simply reject his conclusion. The jury here was carefully instructed that it was the sole judge of the facts, of the credibility of witnesses, of the weight to be given testimony, of the intent of the defendants, and of guilt and innocence. (3 R. 1005-1022.) It would be absurd to assume that any of the jurors were for a moment in the least doubt that they were the ones who were to decide the controverted issues of fact. The respondents' contention that Clifford's testimony invaded the province of the jury and that it amounted to trial by a Government agent, should be contrasted with the fact that they themselves called an expert accountant and asked for and secured his computation based on their theory of the case. (3 R. 991-995.)

If the jury entertained any residual doubt as to the hypothetical character of Clifford's testimony, that doubt completely vanished during his cross

examination. Clifford was asked on cross examination if in making his computation he assumed as true all the evidence offered by the prosecution. (4 R. 19-20.) He was asked if he assumed that Johnson owned the various named gambling houses. (4 R. 37-41.) He was asked item by item whether he assumed that each was income to Johnson. (4 R. 24-34.) He was asked on what sources of information he based his computation and in individual detail on what evidence he based the assumptions as to the items of income. (4 R. 34-41.) Finally, Clifford was asked in detail as to the deductions and adjustments which he had taken into account in making his computation. (4 R. 46-52.)

Since the pivotal consideration was whether the jury was misled by Clifford's testimony, the court below plainly erred in holding that it ~~was~~ "not necessary to refer to his cross-examination in determining the propriety of his examination in chief." (1 R. 199.) If any doubt could have remained in a juror's mind as to the basis for Clifford's computation after his direct examination, it became an utter impossibility that the doubt could have remained after the searching cross examination. *Cf. United States v. Sessin*, 84 F. (2d) 667 (C. C. A. 10th); *Virginia Beach Bus Line v. Campbell*, 73 F. (2d) 97 (C. C. A. 4th), certiorari denied, 294 U. S. 727; *Dunagan v. Appalachian Power Co.*, *supra*. See also *United States v. White*, 124 F. (2d) 181, 186 (C. C. A. 2d).

CONCLUSION

The judgments of the Circuit Court of Appeals
should be reversed.

Respectfully submitted.

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MARCH, 1942.

APPENDIX

Criminal Code:

SEC. 332. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures, its commission, is a principal. (U. S. C., Title 18, Sec. 550.)

SEC. 333. Whoever, except as otherwise expressly provided by law, being an accessory after the fact to the commission of any offense defined in any law of the United States, shall be imprisoned not exceeding one-half the longest term of imprisonment, or fined not exceeding one-half the largest fine prescribed for the punishment of the principal, or both, if the principal is punishable by both fine and imprisonment; or if the principal is punishable by death, then an accessory shall be imprisoned not more than ten years. (U. S. C., Title 18, Sec. 551.)

Judicial Code:

SEC. 269. * * * On the hearing of any appeal, certiorari, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties. (U. S. C., Title 28, Sec. 391.)

SEC. 284. * * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than three terms. * * * (U. S. C. Supp. V, Title 28, Sec. 421.)

Revenue Act of 1936, c. 690, 49 Stat. 1648, 1703:

SEC. 145. PENALTIES.

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title ~~of the~~ payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. or

Revenue Act of 1938, c. 289, 52 Stat. 447, 513:

Section 145 (b) is identical with Section 145 (b) of the Revenue Act of 1936, *supra*.

Revised Statutes:

SEC. 1025. [as amended by Act of May 18, 1933, c. 31, 48 Stat. 58]: No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon

be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, or by reason of the attendance before the grand jury during the taking of testimony of one or more clerks or stenographers employed in a clerical capacity to assist the district attorney or other counsel for the Government who shall, in that connection, be deemed to be persons acting for and on behalf of the United States in an official capacity and function. (U. S. C., Title 18, Sec. 556.)



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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 4

THE UNITED STATES OF AMERICA, PETITIONER
v.

WILLIAM R. JOHNSON

No. 5

THE UNITED STATES OF AMERICA, PETITIONER
v.

JACK SOMMERS, JAMES A. HARTIGAN, JOHN M.
FLANAGAN, WILLIAM P. KELLY, AND STUART
SOLOMON BROWN

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES ON REARGUMENT

Introductory.—On May 4, 1942, the Court restored this case to the docket for reargument.

Johnson and the other respondents had been found guilty under an indictment relating to Johnson's income taxes for the four years 1936-1939, inclusive. The indictment was in five counts. The

first count charged Johnson with wilful attempt to defeat and evade a large part of his income taxes for the year 1936, and charged the other defendants with aiding and abetting. The second, third, and fourth counts made similar charges with respect to the years 1937, 1938, and 1939, respectively. The fifth count charged all of the defendants together with conspiracy to defraud the United States of Johnson's taxes for the four-year period.

The judgments of conviction were reversed by the court below upon a number of grounds, primarily of a technical or procedural character. In addition, the court reviewed the evidence, and although it thought that the verdict upon the first count was not supported as to Johnson and that the verdicts upon the first four counts were not supported as to the aiders and abettors, *it did find that the evidence was sufficient to support the verdicts as to Johnson on the second, third, and fourth counts, and as to all the respondents on the fifth count.* (1 R. 193-196.) The Government's petition for certiorari, therefore, did not present any question as to the sufficiency of the evidence against Johnson on the second, third, and fourth counts, or against all the defendants on the fifth count. The respondents themselves raised that issue, and this Court's order restoring the cause to the docket has limited the reargument to the question whether the evidence supports all the verdicts on all counts. In particularizing the

issue, the order directed consideration of the following questions:

(1) What evidence warranted submission by the trial court to the jury of the charges made as to each of the defendants (a) in each of the four substantive counts, and (b) in the conspiracy count.

(2) In the circumstances of this cause, is proof of gross receipts sufficient to establish that net income resulted from the operation of any enterprise in which respondent Johnson is alleged to have been interested?

(3) To sustain the sentence of respondent Johnson on the first four counts, on petitioner's "expenditure theory," must the record furnish proof that during some one of the four years referred to in those counts his expenditures exceeded reported income, and were made in part from his unreported income received in that particular year?

(4) If so, does the record furnish such proof?

ARGUMENT

Preliminary analysis.—The central issue is whether the jury was reasonably justified in concluding that Johnson had received taxable income during each of the years 1936-1939, inclusive, in excess of the amounts reported by him.

The theory of the prosecution was that Johnson was the owner of a number of gambling

houses in and around Chicago from which he derived large amounts of unreported income, and that other respondents posed as the owners, thereby concealing Johnson's interest. The Government undertook to show that the various gambling houses, although ostensibly separately owned, were actually operated as a unit, thus indicating central control and ownership, and that Johnson was so identified with the houses as to prove that he was the true owner. Considerable evidence was also introduced to show the magnitude of the operations of these houses, including their currency exchange transactions which, in the circumstances of this case, furnished a reliable index of the profits of the enterprise. In addition, the Government introduced extensive evidence to prove that Johnson's cash expenditures during each of three of the four years covered by the indictment were far in excess of his available cash resources and his reported income. Thus, although the evidence on the expenditure theory could, standing alone, support the conviction of Johnson on the second, third, and fourth counts, it was far more significant when considered in the entire setting of the case. For his excessively large expenditures made reasonable the conclusion that he owned, or at least had a dominant interest in the gambling houses with which he was so closely identified. The jury could therefore reasonably attribute to

him a large portion, if not all, of the profits realized by the gambling houses.

The "ownership" and the "expenditure" theories are thus not separate and distinct branches of this case. It is erroneous, we submit, to attempt to isolate each theory, and to search the record for support of each. The correct approach is to consider them together, since each offers substantial support for the other. The fact that Johnson's expenditures exceeded his known cash resources plus reported income furnishes strong support for the conclusion that he owned the gambling houses. And the vast amount of other evidence that Johnson owned the gambling houses certainly explained the source of his large expenditures, thus making it more reasonable for the jury to conclude that he had in fact made the expenditures which he denied and over which the witnesses were at times in sharp disagreement.

The principal question in this case is whether, upon *all* the evidence in the record, the jury could be reasonably convinced that Johnson received more taxable income than he reported. The issue is not "how much" net or gross income he received, nor whether the verdicts can be sustained upon the "expenditure" theory or the "ownership" theory. The issue is simply whether the jury could find that Johnson had in fact received substantial amounts of unreported income during each of the years in question. And the jury was

entitled to take into account the entire mass of testimony pointing towards Johnson's ownership of the gambling houses; it was entitled to draw the reasonable inference that illegal operations of such magnitude would not be carried on for any substantial periods of time unless the rewards were commensurate with the risks involved; it was entitled to infer from the circumstances, set out more fully hereinafter, that the great bulk of the funds passing through the currency exchanges constituted net profits; and it was entitled to link the foregoing inferences with the large expenditures shown to have been made by Johnson.

The dominant issue, whether Johnson received more taxable income than he reported, is fully covered by Question 1 of this Court's order of May 4, 1942. We think that Questions 2, 3, and 4 in large part merely isolate several of the constituent elements of Question 1. The issue is not whether the verdicts can be sustained on any one of these elements, considered separately, nor is it necessary to establish each of those elements; rather, the issue is simply whether the jury was entitled to conclude from the entire record that Johnson had received unreported income. Accordingly, we think that all those elements should be considered as part of Question 1, and we shall endeavor, by appropriate references in our discussion of Question 1, to indicate the part they

play. However, in accordance with the Court's directions, we shall thereafter consider these elements separately and undertake to show that each of them, standing alone, will support the convictions.

I

THERE WAS AMPLE EVIDENCE TO WARRANT SUBMISSION TO THE JURY OF THE CHARGES AGAINST EACH RESPONDENT IN EACH COUNT

At the outset of the trial it was conceded that Johnson and each of the other respondents except Brown were gamblers (2 R. 2-3). There was likewise no dispute that Johnson's income at all material times was primarily from gambling (2 R. 3, 411-412). Throughout the trial it was uncontested that at various times during the period covered by the indictment, 1936-1939, certain gambling houses were operating in and around Chicago¹ (2 R. 1-2).

¹ The indictment specifically named some twenty-five separate houses, twenty-one of which were identified by the following names (1 R. 49):

The Horse-Shoe Club,
The Casino Club,
The Dev-Lin,
The Lincoln Tavern,
The Harlem Stables,
The House of Niles,
The D & D Club,
The Bon-Air Casino,
The Villa Moderne,
The 4020 Club,
The Southland Club,

The Western Club,
The Select Club,
The Mayfair Club,
The Northland Club,
The Club Proviso,
The 4011 Club,
2135 Lake Park Club,
The Harlem Club,
The 11901 Vincennes Club,
The 406 Club,

Johnson denied that he owned or had any interest in those houses. He asserted that his reported income was from gambling conducted by himself individually. (2 R. 3, 410.) But as will appear hereinafter, there was ample evidence before the jury to show that the various houses were not separately owned, that their history and operation proved unitary ownership, and that it was Johnson who was the owner. Conceivably, the Government might have stopped its proof at that point, for the jury would have been justified in concluding that any income of the gambling houses was income to Johnson in addition to that claimed by him to have been gained from individual operations; and the jury would plainly have been entitled to conclude that the gambling houses did receive substantial amounts of income, for the extensive character of the illegal enterprise certainly raised a strong inference that it would not long continue with its attendant hazards unless the profits were commensurate with the risks. But the Government did go further; it went much further, and undertook to show in detail the currency exchange transactions of the gambling houses which furnished cogent evidence of the amount of the profits involved. Moreover, the Government did not stop even there; it went still further and showed that Johnson's personal expenditures during at least three of the years involved (1937-1939) were far in excess of his reported income and known cash resources. From

all these circumstances, the jury was plainly warranted in determining that all the profits, or at least a major portion thereof, were chargeable to Johnson, and that they constituted unreported income.

We shall now proceed to consider the evidence in detail, not only as it relates to Johnson himself, but also as it affects each of the other respondents.

A. EVIDENCE ON THE SUBSTANTIVE COUNTS

1. *The operation of the gambling houses as a unit*

That the various gambling houses were operated as a unit was shown by compelling evidence. The detailed evidence, which will be recounted below, showed that the services furnished to the houses, including the furnishing of horse racing information, telephone, bus service, and moving of furniture and equipment were handled by single firms through single accounts. The houses were interconnected by a private telephone exchange. The original outfitting of a number of the places as gambling houses and alterations and repairs on the houses were made by the same construction crew. Busses and private cars hired by the respondents carried customers to and between the houses.

The various respondents acted as bosses or managers at houses other than the houses which they had stated they owned and were described as acting as day or night shift bosses. Employees were

interchanged among the houses. From 1936 to 1938 three of the respondents carried on the bulk of their banking business at the same currency exchange and through the same account. From 1938 through September 1939, these respondents transacted their banking business at the Lawrence Avenue Currency Exchange operated by the respondent Brown. Brown carried the business as a single account.

a. The gambling houses, their location, construction and maintenance.—Over twenty gambling houses make their appearance in the record. About six or seven recur most frequently.

The Horseshoe Club, at 4721 North Kedzie or Kedzie and Lawrence Avenues, was claimed by Sommers to have been owned by him (2 R. 467; 3 R. 810-811). *The Dec-Lin Club*, Devon and Lincoln Avenue, Tessville, was likewise stated to have been owned by Sommers (2 R. 467; 3 R. 812).

The Harlem Stables, located outside the Chicago city limits, was stated by Hartigan to be owned by him (2 R. 462). Wait testified that Hartigan also owned the *Lincoln Tavern*, on Dempster Road outside of Evanston, Illinois (3 R. 896). Sommers testified that he borrowed the use of Lincoln Tavern from Hartigan several times (3 R. 812, 833, 834).

The D & D Club, Division and Dearborn Streets, Chicago, was claimed to have been owned by Kelly (2 R. 458; 3 R. 878).

Flanagan testified that he owned the *4020 Ogden Club*, 4020 Ogden Avenue, and a second house nearby, the *2141 Club* at 2141 South Pulaski Road (3 R. 931-932). Flanagan also claimed ownership of a handbook service bureau located first at 2135 South Pulaski and later at 4707 Irving Park Boulevard ² (3 R. 931-936).

The Bon-Air Country Club, near Wheeling, Lake County, Illinois, opened as an elaborate night club in 1938 and included a gambling casino the following year. Johnson claimed that he and Skidmore were half owners of the club. Hartigan and Wait operated the gambling casino (3 R. 902, 956).

²The House of Niles, Milwaukee Avenue, Niles, Illinois, and the Casino Club, 4715 Irving Park Boulevard, Chicago, were apparently identified by the defense with Mackay (2 R. 2; 3 R. 822-823, 946; cf. 2 R. 236, 339; 3 R. 569). The Southland Club, 6245 South Cottage Grove Avenue; the Western Club, 9730 Western Avenue; The Lake Park Club, 5325 Lake Park Avenue; the 119 ³Vincennes Club, at that address, and some small handbooks, including the Select Club and Club Proviso, were claimed to have been owned by Creighton (3 R. 857-858).

The gambling room in the Villa Moderne, on Skokie Highway in Cook County, Illinois, was stated to be owned by Wait (3 R. 896).

Certain other small handbooks appear in the evidence such as the Crawford Club, 3946 School Street; the Mayfair Club, 4837 Elston Avenue, and 3332 Milwaukee Avenue; the 4011 Club, 4011 N. Monticello; the Northland Club, 7515 N. Clark Street; and the K & K Club, 2133 S. Kedzie (2 R. 128-129, 135, 137, 174-177, 185, 222-223, 239-240, 247-248, 248-249, 253-254, 257-258, 262, 317-318, 331, 337).

Of the principal gambling houses named, the 4020 Ogden Club and the Horseshoe apparently were in operation for a considerable period of time prior to 1936 (2 R. 293-296). The rest of the more important houses, however, were opened and began operation late in 1935 or in 1936. The principal testimony as to the construction of these houses comes from the witness Charles G. Schultz, a carpenter.

Schultz testified that in the spring of 1935 he was employed by one Roy Love and together with others did construction work on the outside of the Dev-Lin. At that time the place was simply a dance hall and had no gambling. Three or four weeks later, after the conversion, the witness saw gambling at the Dev-Lin. (2 R. 234-235.)

Thereafter, Shultz worked at the Dev-Lin as an employee for about six months and was then called to work at the House of Niles in November of 1935, where he did alterations for three days. Next, Schultz, Love, and three other men were taken to the Lincoln Tavern, which was then a roadhouse. The men made interior alterations, and after it reopened, Schultz observed gambling. (2 R. 236-237.)

In February of 1936, Love sent Schultz to work at the D & D Club. Schultz worked first alone and then with one other man in making alterations in a basement room and later, with a crew of men, made alterations in what had been an old lodge hall on the second floor. No gambling equip-

ment was in the place when Schultz went there. He worked there about four or five months. (2 R. 238.)

Beginning in the summer of 1936 Schultz and others next worked under Love on the Harlem Stables for a period of about six weeks or two months. Alterations were made in the interior and an addition was built. The place had been a tavern and contained no gambling equipment. After the work was completed, Schultz saw what looked like gambling and horse-book material there. (2 R. 238-239.)

Schultz testified that they next worked on Johnson's farm under Love's direction. There they built a house and some outbuildings and made alterations and repairs. All this work was done in 1937. (2 R. 239.)

After working on Johnson's farm, Schultz in succession did panelling at the Harlem Stables and at one of Flanagan's houses, made alterations at two other places, and finally returned to Johnson's farm for additional work (2 R. 239-240.)

When Schultz finished the second time at the farm, he thereafter worked under Love about three months on the construction of a building at the Bon-Air Country Club. In 1939 Schultz again did construction work at the Bon-Air. (2 R. 240.)

Finally Schultz testified that he did some repair work at the Horseshoe, working there about two weeks under Love's orders (2 R. 241.)

Three other workmen gave similar testimony of being employed by Love, of doing repairs or alterations at the same places and of being directed to work at specified places by Love. Their testimony was as to occurrences in 1937, 1938, and 1939. (2 R. 128-132, 134-135, 336-337; similarly see 2 R. 133, 310.)

The respondents' explanation of Love's activities was that he was an independent handy man, repair man, and building contractor doing business at least part of the time under the name of the Lightning Construction Company and that he was hired to work on each of their places at the recommendation of one or two of the other respondents (3 R. 810, 884, 912, 937, 962, 979). Schultz, however, testified that Love was in charge of the kitchen at the Lincoln Tavern after gambling started there (2 R. 237). An accountant who installed an accounting system at the Lincoln Tavern in December, 1935, and January of 1936 stated that Love was in charge of the dining room at the Lincoln Tavern (2 R. 305). Love arranged for the regular servicing of exhaust fans at the Horse-shoe and Dev-Lin by a fan blower company (2 R. 274-275). One witness told of Love directing the moving of gambling equipment from the Horse-shoe to the Lincoln Tavern, and, after similar equipment had been moved from the Lincoln Tavern to the Dev-Lin, of Love directing its installation at the latter place (2 R. 133-134; see

also 2 R. 354; cf. 2 R. 139). Three of the workmen who testified stated that between construction jobs they were employed in the actual operation of the gambling houses, Schultz running the boiler in two of them and acting as a "shill" (an employee who poses as a patron to attract customers), another as a "shill," and one first as a "shill" and later as a doorman at the Bon-Air. All of these stated that Love sent them to work at the houses in this manner. (2 R. 124-131, 135, 236-237, 240.)

Love rented a store space near the Horseshoe and used it for storage of equipment (2 R. 353; 3 R. 810). One witness described this as the place where the various employees of the gambling houses congregated to learn which of the houses were open (2 R. 353). Schultz, on being asked about the "Lightning Construction Company," said he first heard about it while working at the Bon-Air and that he thought it was a joke (2 R. 246). Love could not be found by the Government (3 R. 778-780).

b. The clearing house, its horse-racing service and telephone exchange.—During the entire period covered by the indictment the gambling houses were physically interconnected by a private telephone system (2 R. 195-208, 208-215). The exchange for this private system was located at what was described as the clearing house (2 R. 175). From prior to 1936 through August 1, 1938, the clearing house was located at 2135 South Craw-

ford Avenue, the name of the street during the period being changed to South Pulaski Road (2 R. 197-201). On August 1, 1938, the clearing house was moved to 4715 Irving Park Boulevard and continued in operation there. Telephone service was finally terminated at that address on February 7, 1940. (2 R. 200, 208-209, 214-215.) The telephone service to all of the houses from the clearing house included both one-way broadcasting service and regular two-way service (2 R. 214).

Horse-racing information was sent from the clearing house over the telephone system to the various houses (2 R. 179, 331; 3 R. 932-937). One witness described being called from the clearing house and told of certain errors in the computation of horse-racing bets at the house where he was working (2 R. 180; cf. 2 R. 330). In the making of horse-racing bets duplicate sheets recording the bets were kept in all the houses and two witnesses told of these duplicate sheets being delivered to the clearing house (2 R. 178-179, 332). Still another witness told of working in the clearing house "figuring" bets on the duplicate sheets (2 R. 256-258).

One witness described working at a gambling house in 1929 and 1930 which was connected with the clearing house and told of procuring supplies and equipment for the club by ordering them from the clearing house over the telephone system (2 R. 176). The owner of a bookmakers' supply house testified to the making of regular deliveries of

bookmakers' supplies to the clearing house during 1939. The supplies were in large quantities, but were ordered as a number of separate orders, identified by number and delivered separately wrapped. (3 R. 729-732; Govt. Exs. O-212A—O-218S.)

Flanagan testified that he was the sole owner of the clearing house which he described as a service bureau. He stated that it was simply a business for the purchase of horse racing information from the General News or Nationwide News Service and the reselling of this service in improved form to various gambling houses in Chicago. His service was described as including the taking of "lay-off" or hedging bets from the owners and "daily doubles" and he testified that this required the delivery to the clearing house of sheets recording these transactions, but not the duplicate sheets described above. (3 R. 932-937, 939-941.)

As will be later shown (*infra*, pp. 32-33), however, Flanagan's account with the Nationwide News Service was identified with Johnson (2 R. 150-159). Flanagan's description of the character of his service was inconsistent with the previously related testimony as to the checking of individual bets in the houses and the furnishing of supplies through the clearing house. Finally, Flanagan's testimony was directly impeached since he denied that a man named Morgan was ever connected with the clearing house or that a Joseph Conroy was other than a hanger-on who helped in planning the telephone hook-up. (3 R. 937, 945.) Two

local telephone managers in charge of the telephone service to the clearing house testified that all of their dealings were with a man who called himself Morgan or Vase (2 R. 204-205, 215). One of these managers identified a picture of Conroy (Govt. Ex. O-125) as being the man Morgan (2 R. 197). Conroy was shown to have been working at the clearing house (2 R. 175-176, 179-180, 373-374). He could not be found by the Government (3 R. 777-778).

c. The interchanging of managers.—Particularly cogent in showing the operation of the houses as a unit was the mass of testimony of employees of the houses and of one or more of the customers telling of the appearance of the respondents at various houses as bosses or managers and their acting as day or night shift bosses or as bosses together or in the absence of one another. This evidence had a further and equally important effect. It will be recalled that the entire defense was that the respondents Sommers, Hartigan, Flanagan, and Kelly were the sole owners of specific gambling houses—Sommers of the Horseshoe and Dev-Lin, Hartigan of the Harlem Stables and the Lincoln Tavern, Flanagan of the 4020 Ogden Club and 2141 Pulaski, and Kelly of the D & D Club. The evidence as to these respondents acting as managers at houses other than those identified with them by the defense in itself completely destroyed this defense and revealed the respondents in their true light as employees and not as owners.

Sommers.—Sommers, although claiming ownership of the Horseshoe, was described by one employee as working there as cashier in 1935 or 1936 (2 R. 133). One witness told of Sommers being his night boss at the Horseshoe in 1937, the testimony of another indicated that Sommers was the day boss at the Horseshoe in 1939 (2 R. 319-320, 322).

During the construction of the Harlem Stables gambling room in 1935 Sommers gave orders on the construction work (2 R. 235). Seven witnesses testified that Sommers was a boss at the Harlem Stables. Their testimony covered all of the years from 1936 through 1939 and included testimony as to Sommers acting there as day boss, and as doing a little of everything, floor boss, transportation boss, and all-around man (2 R. 225, 297, 316-317, 322, 346, 352, 398).

When the Lincoln Tavern was opened in 1936 Sommers gave orders during the daytime (2 R. 236-237, 242). Four other witnesses stated that Sommers acted as boss at the Lincoln Tavern, including acting as day boss and as transportation boss. This was largely as to the year 1936. (2 R. 133-134, 296, 310, 316; cf. 2 R. 121.) Finally, a customer who played at most of the important

¹ Ordinary telephone service at the Harlem Stables was installed August 24, 1936, in the name of Sommers and later taken over in the name of Earl Jackson. A second change followed and on April 21, 1939, it was changed from the name of Sommers to that of Hartigan. (3 R. 698-699.)

houses gave testimony to the effect that she saw Sommers acting in a supervisory capacity at the Dev-Lin, the Lincoln Tavern, the Harlem Stables, and the Horseshoe (3 R. 567).

Hartigan.—Hartigan claimed ownership of the Harlem Stables and the Lincoln Tavern. The witness Schultz, however, who described the construction of both houses, testified that although Hartigan was at the Lincoln Tavern just after it opened, Sommers and Love and not Hartigan gave him orders. (2 R. 237, 243.) One witness, who worked at the Lincoln Tavern in 1936 and at the Harlem Stables thereafter, described Hartigan as being a floorman at both places and testified that Sommers and Kelly were at both places at the same times as Hartigan and were also acting as bosses (2 R. 296, 297-298). Similar testimony was given by two witnesses, one as to the Lincoln Tavern, the other as to the Harlem Stables (2 R. 310, 352). Two other witnesses testified respectively that Hartigan was a night boss at the Lincoln Tavern in 1936 and night boss at the Harlem Stables in 1938 (2 R. 316, 398).

Two witnesses testified that Hartigan became the boss at the Horseshoe after the death of Barnes, a former manager, in 1934, and that Hartigan continued as boss at the Horseshoe thereafter (2 R. 295-296, 309). Four witnesses directly testified, and the testimony of one other indicated, that Hartigan was the night boss at the

Horseshoe. Their testimony was as to the years 1934 or 1935, 1937 and 1939. (2 R. 316, 319-320, 326, 348, 387.) Additional testimony of a number of witnesses identified Hartigan as a boss at the Horseshoe in 1935 or 1936, 1938 and 1939 (2 R. 120, 133, 180, 226, 322; 3 R. 546).⁴

Five witnesses told of, or described incidents indicating Hartigan's acting as boss at the Dev-Lin. The years 1938 and 1939 were specifically mentioned in this testimony. One of the witnesses described Hartigan as night boss at the Dev-Lin (2 R. 262, 310, 317, 322, 387).

Hartigan was stated to have been a "box-man" at the 4020 Ogden Club in 1931 and 1932 and one of its managers during the period 1933-1935 (2 R. 184, 293-294). Again, the witness who had played at the various houses described Hartigan as acting "like a floor-walker" at the Horseshoe, the Dev-Lin, the Lincoln Tavern, and the Harlem Stables (3 R. 567).

Flanagan.—Flanagan stated that he owned the 4020 Ogden Club and 2141 Pulaski Road. There was less testimony as to his appearance at other houses but one witness testified that Flanagan acted as a boss at the Dev-Lin when the other bosses were not there (2 R. 352). Another witness described Flanagan as sitting at the entrance

⁴ An ordinary telephone was installed in the Horseshoe on March 13, 1935, in the name of Hartigan. On December 20, 1938, the name of the subscriber was changed to Summers (3 R. 699-700).

to the Lincoln Tavern gambling room and greeting people coming in (2 R. 296).

Kelly.—Kelly claimed ownership of the D & D Club which opened in 1936. Various witnesses testified, however, that Kelly was working as a "box-man" at the Horseshoe in 1935 or 1936 and at the Lincoln Tavern in 1936. (2 R. 237, 296, 310.) Another witness told of Kelly's being in charge of the wheels (roulette) at the Dev-Lin (2 R. 333-334). Five witnesses stated, or indicated, that Kelly was a boss at the Harlem Stables, their testimony covering 1937, 1938, and 1939 (2 R. 297, 318, 346, 352, 384). One witness who worked at a number of the houses told of Kelly's being his boss at the D & D, the Harlem Stables, the Horseshoe, and the Lincoln Tavern (2 R. 324).

d. The interchanging of employees.—Over forty witnesses testified that during the indictment period they had been employed in the various gambling houses. All of these witnesses told of shifting from house to house during their employment. A considerable portion of this shifting was attributable to the individual acts of the employees or to the fact that the houses were not operated all at the same time but at various times, and the employees would shift to the house or houses which were open. Part of the shifting, however, appears to have been done en masse and was made between houses which the respondents claimed were separately owned. (2 R. 225, 254-255, 297, 309, 316, 339, 346, 384-386, 391.) Twenty-one witnesses

testified of, or their testimony indicated, their being shifted from one house to another at the express direction of one of the respondents or their employees, or by direct but unidentified orders. These shifts were between houses claimed to be separately owned.

Sommers sent a driver and a "shill" from the Horseshoe to the D & D on two different occasions, the latter being transferred in 1938 when the Horseshoe closed (2 R. 297, 328; see also 2 R. 322). One witness was "recommended" by Sommers to go from the Lincoln Tavern to the Horseshoe in 1936 or 1937, from the Harlem Stables to a gambling house on 119th Street at a later date, and from the Dev-Lin to the D & D for one day's work at the latter place (2 R. 316-317). Gates, the manager of the handbook at the Horseshoe, arranged for a "service man" at the Horseshoe to get extra work at the Casino as a cashier (2 R. 178). A "shill" at the Horseshoe was told by a runner on the floor to go to the Harlem Stables (2 R. 255-256; see also 2 R. 397-398, 400).

Hartigan sent a "shill" from the Dev-Lin to the Harlem Stables in 1939. After two days there the "shill" asked the manager, one Bartel, to be returned to the Horseshoe so that he would not have as much traveling to do, and he was sent back to the Horseshoe. (2 R. 387.) A "board-man" was sent by Hartigan from the Crawford Club at 3948 School Street to the Harlem Stables in 1938 (2 R. 247). Flanagan in 1933 ordered a "shill" work-

ing at the 4020 Ogden Club to report to the Horseshoe (2 R. 295).

In 1939 when the D & D was closed, Kelly sent a "shill" to the Harlem Stables (2 R. 338). Another "shill" likewise told of being transferred between the D & D and the Harlem Stables in the same year (2 R. 325). A porter at the Lincoln Tavern transferred to the D & D Club in 1936 at Kelly's directions (2 R. 133). A witness who asked Kelly for work at the D & D Club was sent by Kelly to Hartigan at the Horseshoe and given work there (2 R. 326). A watchman who was employed at the D & D when it closed in 1938 was told by Kelly that the Harlem Stables was going to open and that he would be reemployed. When the Harlem Stables opened the witness was employed as before.⁵ (2 R. 277.)

c. Miscellaneous factors showing unitary ownership and operation.—(i) Furniture and equipment were regularly interchanged between the houses and between houses asserted to be separately owned. Three employees told of helping to move gambling paraphernalia, one of moving from the Horseshoe to the Lincoln Tavern in 1936, and from the Lincoln Tavern to the Dev-Lin at a later date. Another helped move from the Harlem Stables to the House of Niles. The third helped move equipment from the Horseshoe in 1937 and

⁵ For similar testimony unidentified with particular respondents see 2 R. 222-223, 250-251, 254, 318, 352, 388-390, 391-392.

went himself from the Horseshoe to the Lincoln Tavern. (2 R. 133-134, 139, 324.)

A single mover made all of the transfers of equipment between the houses. He first began this work in 1936. In testifying, he recalled moving equipment from the Horseshoe to Harlem Stables, from Harlem Stables to the Lincoln Tavern, from Lincoln Tavern to Harlem Stables, and to and from the D & D Club. On direct examination, he testified that he received the orders to move equipment from Sommers. All of the moving was carried by him in a single account under the name of the Horseshoe. On cross examination, however, he stated that he received orders for moving from Kelly and Hartigan who had been recommended by Sommers and that Sommers, Kelly, and Hartigan each paid him for the work rendered to them. (2 R. 265-271; see also 2 R. 272-273.)

Late in 1939 the mover transferred equipment from the Horseshoe and the Harlem Stables to a storage warehouse (2 R. 266, 270). An employee of the warehouse testified that after the goods arrived Sommers requested her to make out two separate warehouse receipts, covering the goods, one in his name and one in Hartigan's and to bill each of them for half of the charge. No inventory or physical separation of the goods was made, however. On three different occasions Sommers paid both of the storage bills. (2 R. 272-273, 344.)

(ii) Bus service was furnished at various times between the houses, including those claimed to be separately owned. A single bus company rendered all of this service. The operator of the bus company testified that it operated a bus from Wilson and Broadway in Chicago to the Lincoln Tavern, making a pick-up stop at the Horseshoe, from Wilson and Broadway to the Harlem Stables, with a stop at the Horseshoe, and from a place on Milwaukee Avenue to the House of Niles. The busses also ran to the Lincoln Tavern, from December 1935 to approximately May 10, 1936, about ten days in December 1936 and four or five days in June 1937 and to the Harlem Stables from February to September 1937 and in January 1939. Sommers made the arrangements for all of the bus service and paid for the service once or twice. A doorman made most of the payments. (2 R. 306-308.)

An employee at the Horseshoe stated that it had a light over the door which flashed when the bus was to leave for the Keno game at the Lincoln Tavern (2 R. 316). A driver who drove customers to and between the clubs told of the bus running to the Harlem Stables via the Horseshoe and stated that he drove his car there between bus trips (2 R. 389-390).

During most of the period covered by the indictment owners of private cars were regularly employed to drive customers from pick-up points in Chicago to the various gambling houses and

from one house to another. As with all of the other services this included transportation between houses which the respondents contended were owned and operated separately. Eight witnesses testified concerning this transportation service. They told of carrying customers between the D & D Club and the Harlem Stables, from the Horseshoe to the Harlem Stables and from 4020 Ogden to the Harlem Stables. (2 R. 249-250, 250-252, 254, 262, 297, 381-382, 388-390; 3 R. 569.)

(iii) A school was conducted near the Horseshoe where "shills" were given instruction and training to qualify them as "dealers" at a dice table. The school was attended by "shills" from the various houses and was not limited to employees of the Horseshoe. (2 R. 358, 384-385.)

(iv) From June 1936 to July 1938 banking transactions of the Horseshoe, Lincoln Tavern, D & D Club and Harlem Stables were handled at a single currency exchange, the Albany Park Currency Exchange, through a single account. The owner of the exchange testified that in June 1936 Sommers came into the exchange with some checks and made arrangements for the cashing of checks. Thereafter Sommers came in with checks to be cashed almost every day for a month. At that time Sommers brought in a man whom he introduced to the witness as Maurice Downey. Sommers told the witness that Downey would bring the checks in every day and that he, Sommers,

would guarantee all checks having Downey's initials. Sommers had previously agreed to guarantee checks cashed by him personally. (2 R. 476-477.)

Thereafter Downey regularly brought in checks and occasionally Sommers also brought some in. These were deposited by the exchange for collection and the cash given to Downey later in the same day. Downey likewise regularly brought in currency to be exchanged for new currency. (2 R. 477, 486-487, 494, 497.)

All of the checks brought by Downey or Sommers bore their initials J. S. or M. D. The checks likewise were variously initialed K. L., L. T., D. D., or H. S. When the exchange received the money for the checks, the owner divided it into separate envelopes and delivered these to Downey. The envelopes containing the cash were marked with the initials K. L., L. T., D. D., or H. S. The witness stated that by these initials he meant Kedzie and Lawrence (the Horseshoe), Lincoln Tavern, the D & D Club, and the Harlem Stables. (2 R. 477-479, 484-485, 487-488, 497.)

When checks were returned to the exchange unpaid the owner in every instance would inform Sommers. If the unpaid check was marked K. L., Sommers sent over the money to cover the check. As to checks otherwise marked, Sommers told the witness he would call and see that they were taken care of; Downey would then bring in the cash or the amount of the checks

would be deducted from incoming checks. (2 R. 497-498.)

In July 1938 all of this business was taken away from the Albany Park Currency Exchange (2 R. 477-478). Sommers at this time told the owner of the Albany Park Exchange that the respondent Brown was getting the business (2 R. 477). Brown opened the Lawrence Avenue Currency Exchange near the Albany Park Exchange in July 1938 (2 R. 478, 532). Sommers, Hartigan, and Kelly stated to revenue agents that they cashed checks at the Lawrence Avenue Exchange (2 R. 459, 463, 468). The Lawrence Avenue Exchange carried all of this business as a single account. (*Infra*, pp. 55-60.) A witness who worked in the bank room where the Lawrence Avenue Currency Exchange was located stated that she saw Sommers in the exchange almost every day while it was open but that she could not recall having seen Hartigan there (3 R. 588, 593). A similar witness on being asked if he saw persons in the court room whom he had seen in the exchange stated that he had seen Sommers there almost every day and Hartigan eight or ten times, but he did not identify Kelly (3 R. 595-596). The same witness testified that a Miss Bernice Downey, Brown's partner in the exchange, brought checks into the exchange every morning (3 R. 596-597). The Lawrence Avenue Currency Exchange closed in September 1939 (2 R. 536-537). This was approximately the same time that

the clearing house and all of the gambling houses ceased operation (2 R. 191-192, 214-215, 252, 262, 277-278, 326, 384-386, 400-401).

2. *The ownership of Johnson*

The evidence which has just been summarized was unquestionably ample to justify the jury's concluding that the important gambling houses named were not separately owned establishments but were operated and controlled under a single ownership. Indeed it is difficult to perceive how a jury could reach any other conclusion as to this phase of the case. The fact of single ownership having been established, the Government's evidence likewise identified Johnson with the houses in a number of ways and a multitude of instances which formed a most substantial basis for the jury's apparent conclusion that Johnson was the single owner.

Johnson admitted that he owned the three buildings in which the 4020 Ogden Club, 2141 South Pulaski Road, and the D & D Club were located (2 R. 411; 3 R. 950). Johnson was shown to be the owner of the building in which Brown's currency exchange, the Lawrence Avenue Currency Exchange, was located. (2 R. 56-57.) This latter building was purchased by Johnson on July 16, 1937 (2 R. 57). It was the usual one-story bank building containing safe-deposit vaults, suitable only for bank use (3 R. 587-599). Brown

opened the currency exchange there in July 1938 after Johnson purchased the building (3 R. 587, 590).

After the D & D Club opened Johnson installed an air conditioning unit at a cost of approximately \$15,000. The salesman who negotiated the contract testified that he went to the D & D Club on a lead and was given permission by Kelly to survey the premises. Subsequently he discussed the matter with Johnson and Kelly at the D & D and after he submitted a bid Johnson signed the contract at the D & D. While the unit was being installed the witness saw Johnson one evening at the Horseshoe, Kelly having told him he would find Johnson there, and Johnson said that the probabilities were that air conditioning would be installed at other places. At that time Johnson mentioned a place at Irving Park and Cicero (the Casino) and another at 63rd and Cottage Grove (the Southland). (2 R. 39-45.) Kelly's "rent" at the D & D was not increased after the air conditioning was installed (2 R. 14-15, 16-19).

The construction crew working under the direction of Roy Love, which constructed many of the gambling houses in 1935 and 1936 and which did repair work at the gambling houses at various times, built several buildings and made repairs and alterations at Johnson's farm in 1937 and 1938. The same crew under Love worked in 1938 and 1939 on the construction of the Bon-Air Country

Club (2 R. 130-131, 135, 239-240, 336-337), which was shown to be owned by Johnson. (*Infra*, pp. 102-106.)

A number of witnesses testified to direct acts of ownership and control by Johnson. Of particular significance was the testimony of Lenz (2 R. 150-166), a former manager of the Nationwide News Service which furnished the clearing house with horse racing information that was in turn relayed from there to the various gambling houses. On two occasions, once in 1935 and once in 1938, when the Nationwide News Service undertook to raise its charges, Johnson appeared with Flanagan to protest against the increase. The jury was warranted in concluding from this entire line of testimony that Johnson assumed the dominant role in attempting to preserve the former rate schedules, thereby revealing his true status as owner. Moreover, Lenz testified that during the previous week he had made the following statement under oath to a Special Agent with respect to his conversations with Johnson (2 R. 157, 164-165):

During the course of various conferences between Mr. Johnson, myself, and others at the Nationwide offices with reference to rates charged to Mr. Johnson for Nationwide News Service, Mr. Johnson argued that his rates should be lower in comparison with the rates charged to other bookmakers because customers were drawn into his places by other gambling games rather than by bookmaking activities.

And the jury was warranted in concluding from his testimony before it that Lenz reaffirmed as true that description of those conversations " (2 R. 157, 165).

An accountant testified that in December 1935 he was introduced to Johnson at the Lincoln Tavern and was asked by Johnson whether he could install a system in the dining room and bar at the Lincoln Tavern that would enable them to know whether they were making or losing money each month. The witness was instructed by Johnson to proceed to install the system. He was introduced to Roy Love who was in charge of the dining room and to Wait, and at that time Johnson told him that all

* In the respondent Johnson's prior brief in this Court (Br. 77), he contended that this statement was a mere impeaching question and under the decision in *Southern Railway v. Gray*, 241 U. S. 333, was not affirmative evidence of the truth of the matter asserted therein. A careful examination of the record (2 R. 150-166), however, discloses that the witness had previously given no contradictory testimony but had said simply that he did not recall any statement of Johnson's to this effect. Accordingly, he was cross-examined as to his prior statement to the Special Agent, not for the purpose of impeachment, since no impeachment would have resulted, but for the purpose of refreshing his recollection as to the subject matter of his conversations with Johnson. On being questioned as to his prior statement both by Government and defense counsel, his testimony may reasonably be construed as reaffirming the truth of the prior statement. Only the reaffirmation was before the jury, the prior statement was neither offered nor received in evidence, as such, and only the reaffirmation is now relied on. This method of refreshing the recollection of a reluctant witness was proper. *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 231.

his dealings should be with Love and Wait. Thereafter the witness submitted two monthly reports to Wait. (2 R. 305-306.)

One witness testified that he had been playing dice at the Dev-Lin one evening in 1936 or 1937 when a dispute arose as to the call on "crooked" dice and he lost as a result of the call. When the witness left the table Johnson stopped him and attempted to explain what had happened; he finally said that if the witness did not consider himself fairly treated, he, Johnson, would reimburse the witness out of his own pocket. (2 R. 379-380.)

A customer at the Horseshoe testified that she complained to Sommers about the reduction of the betting limit on the game of red and black in 1938. He told her that if she wanted a higher limit she would have to consult Johnson and that she could find Johnson at the Bon-Air Country Club. The witness went out to Bon-Air and asked Johnson about the limit. Johnson told her that he would get in touch with Sommers immediately and have the limit restored. (3 R. 566-567, 572-573.)

Johnson personally settled and paid the claims of two prior owners of the Harlem Stables and two of their employees who had been forced out of business when the gambling room at the Harlem Stables opened. The prior owners, the two Glave brothers, testified that they operated a tavern and night club at the Harlem Stables from

September 1934 to August 1936. In August 1936 they went out there at night and found their equipment and liquor stock gone and workmen busy making alterations in the building. They talked to Sommers about the situation but he professed to know nothing about it. Thereafter they lodged a complaint with the State's Attorney. Two nights later they returned and saw Johnson, Sommers, and others. Johnson told one of the Glaves that he had made a lot of trouble for him and had made the place "a ball of fire." They discussed the matter and a meeting was arranged two nights later. Johnson, Sommers, and others were at the meeting. The Glave brothers asked \$3,500 for their investment. Johnson refused and after some negotiating he finally offered to pay \$200 to each of them. They agreed and Johnson then personally gave them the money. It was likewise agreed that any claims against the Glaves arising out of their business would be settled by Johnson and that the complaint to the State's Attorney would be withdrawn. (2 R. 283-290, 290-292.)

Two days later one of the Glaves went to Harlem Stables with two of their employees. Johnson agreed to settle the claim of one of the employees for back wages for \$100 and he personally handed the money to the employee's wife. A similar agreement as to the second employee's wages had been made at the previous meeting; at this time Johnson directed Sommers to see that the

employee got the money and Sommers had the cashier give the employee the money. (2 R. 287, 472-474, 474-475, 475-476.)

Eleven witnesses testified that Johnson personally employed them to work at the gambling houses or gave testimony indicating that Johnson was instrumental in their being employed (2 R. 177-178, 222-223, 224-226, 276-277, 309, 310, 315, 322-323, 328, 351-352, 387, 396-397; see also 2 R. 319, 326, 339-340; cf. 2 R. 345-346, 347). One of these witnesses stated that he was working at the K & K Club in 1930 when a message came in for the manager and for him that Johnson wanted to see them. They went to the 4020 Ogden Club where they found Johnson waiting for them. He had a garnishment notice and, after reprimanding the witness, discharged him. In 1938 the witness talked to Johnson at the office of William Skidmore and told Johnson he wanted his job back. Johnson berated him for being foolish and a "smart guy" and told him, "You know you could have one of these spots, because I liked your work." Johnson told the witness to meet him at the Dev-Lin the following night. The witness went there and saw Johnson and Sommers. Johnson called the witness over and said to Sommers, "This is one of our good men that couldn't behave himself. I want him to go to work tomorrow." The witness thereafter went back to work at the Horseshoe. (2 R. 176-178.)

Another employee testified that he was playing at the House of Niles in August 1936, and asked Sommers for a job. Sommers told him he would have to see Johnson. The witness saw Johnson at the House of Niles and asked for a job. Johnson told him to park cars at four dollars a day. When the witness protested that he had a large family, Johnson said to make it five dollars. The witness worked at the House of Niles about a month; when it closed he moved to the Harlem Stables. While there he saw Johnson and asked him for extra work at night to earn more money. Johnson sent him to the Villa Moderne, where he worked parking cars at night. (2 R. 224-226.)

A third employee who had been a check room boy at the Horseshoe stated that he saw Johnson and Sommers at the Lincoln Tavern in 1935 and asked for a job. Johnson told him to go to work at the cigar store on the corner of Kedzie and Leland. The witness started to work there the next morning. It was used as a bus station to take customers to the Lincoln Tavern. The witness thereafter worked as a check room employee at a number of the houses. At a later time when he was unemployed he saw Johnson and Hartigan at the Dev-Lin. He spoke to Johnson and Johnson said, "Well, there is nothing right now but I will give you \$10.00 a week." Johnson told Hartigan to O. K. the \$10.00. Thereafter the witness came

to the Dev-Lin on Saturday nights and was paid the \$10.00 by the cashier. (2 R. 309-310.)

Fifteen witnesses testified that they saw Johnson at the various gambling houses here in question (2 R. 20-21, 34, 130, 134, 136, 177, 223, 225, 237-238, 249, 294, 296, 350-351, 352, 363-364, 379, 381, 387; 3 R. 569, 571). One witness who worked at the 4020 Ogden Club in 1931 and 1932 stated that he saw Johnson there an average of twice a week (2 R. 294). Another who was employed at a number of the houses over a period from 1934 to 1939 testified that he saw Johnson at the Horseshoe an average of four or five times a week over a period of eleven months, at the House of Niles twice a week over a three-week period, and at the Harlem Stables about three or four times a week over a period of a few months (2 R. 350, 352). A customer who played regularly at the various gambling houses from about 1936 or 1937 until they closed (1939) stated that Johnson used to come into the Horseshoe in the evening and that she had seen him there quite a few evenings (3 R. 571). When these different witnesses were asked what Johnson was doing, most of them simply stated that they saw him walking around and talking to people. One witness who had worked at many of the houses, however, stated that when he saw Johnson at the houses Johnson was acting "like the head of the house" or "like the head man". (2 R. 350-351, 352.) In describing what he meant by acting like the head man the witness

said that he saw Johnson give money to people many times, either taking it out of his pocket or reaching into the cashier's cage and taking the money from there (2 R. 364). Another witness who played at many of the houses said that Johnson and other of the respondents "were walking around as though they were interested in what was going on—the managers like" (3 R. 569). She stated that Johnson would stand by the cashier's cage and various employees who said they had come to see Johnson would go up and talk to him (3 R. 571).

Johnson regularly appeared upon the scene at the gambling houses when anything out of the ordinary was happening. One witness stated that a robbery occurred at the 4020 Ogden Club in 1933 while he was working there. About twenty minutes after the robbery Johnson came in to talk to Flanagan and two or three others. The witness described Johnson as being angry. (2 R. 294-295.) The same witness told of working under a Tom Barnes at the Horseshoe in 1934. Barnes died in that year. On the last night that the witness saw Barnes at the Horseshoe before his death, Johnson, Barnes, and Hartigan were sitting at a desk at the Horseshoe talking. Thereafter, Hartigan appeared as boss at the Horseshoe. (2 R. 295-296.)

When the Dev-Lin was being constructed as a gambling room in 1935, Johnson was seen there one evening by one of the workmen walking around with Sommers and looking at the building

(2 R. 235-236). In the course of the alterations at the Lincoln Tavern late in 1935 or early in 1936, Johnson came into the room with Wait and another man. Construction work was going on then. They were looking around and talking to one another and stayed about an hour. (2 R. 236-237.) Johnson's appearance and settlement of the dispute over ownership of the Harlem Stables at the time of its opening as a gambling house in August of 1936, which has been previously described, was a similar incident (*supra*, pp. 34-36).

A witness stated that one night in the fall of 1936 when he came to work at the Dev-Lin the place unexpectedly was closed and the whole place looked "like a riot." The men were all told to help get things out of sight. A teamster who regularly handled moving at the gambling houses was there. Love was directing the crew of men. Sommers was present and Johnson, Kelly, Hartigan, and Wait came in later. As Johnson walked by, the witness heard him say, "Well, it is all off". (2 R. 354-355, 368; see also 2 R. 353-354, 372.)

Some of Johnson's statements to various witnesses having direct bearing on his ownership of the houses have already been related (*supra*, pp. 31, 32-33, 35, 36). Several other statements of Johnson's are of particular significance.

On March 27, 1939, Johnson made a formal statement to revenue agents. In the course of the statement he denied that he owned any of the gambling houses. He further said, however, "In

1937 I gambled at Dearborn and Division, Lawrence and Kedzie, 63rd and Cottage Grove, Ogden, and Crawford. That's my own gambling houses". (2 R. 407, 410, 414.)

An employee of the gambling houses, whose testimony has already been referred to (*supra*, pp. 38-39, 40), further testified that when his days of work at the Dev-Lin were reduced, he took a friend, a city office holder, to the club to intercede for him with Johnson. They talked to Johnson and in the course of the conversation Johnson said, "Well, I am not a politician by profession. I am running gambling houses". (2 R. 351-352, 361-362.) The witness did not fix the time of this conversation precisely. It apparently took place in or after 1935, however, for the Dev-Lin was first opened in the spring or summer of 1935. (2 R. 234-236.)

At the trial Johnson testified that he had never owned a gambling house after 1921 (3 R. 987). In rebuttal the Government presented testimony of Johnson given to revenue agents in 1932, when he stated that he was the sole owner of the gambling house he ran, that he ran a place in 1929 at 2141 Crawford, and that he had eight or nine places around 1930 (3 R. 996-998).

Johnson's income tax returns for the calendar years 1927 through 1935 were all prepared by an accountant named Brantman. Brantman also prepared the returns of Sommers, Hartigan, and Flanagan for several years through 1935,

and of Kelly for the years 1934 through 1936. Beginning with the returns for the years 1933 or 1934 Brantman also prepared returns for a great number of the employees of the gambling houses. (2 R. 419-433, 435, 445-448.)

In the spring of 1937 Johnson told Brantman that he was giving the work to someone else and changed to another accountant, Radomski, who prepared his returns for the years 1936 through 1939 (2 R. 101, 433). The others changed at the same time and Radomski prepared the 1936 and subsequent returns for Sommers, Hartigan, and Flanagan and the 1937 and subsequent returns for Kelly (2 R. 94-97, 106-109). Radomski also prepared returns for many of the gambling houses' employees after 1937 (2 R. 110-114). Brantman prepared the 1936 returns for Kelly and ten of the employees but thereafter prepared none of their returns (2 R. 432-433).

Brantman testified that in 1932 he had a conversation in his office with Johnson concerning income taxes. He told Johnson that the Government was making a drive on income tax returns of individuals whose revenue was from illegal sources and that if there were any men or employees he might have it would be well to have them file returns. Johnson said, "I'll see." Later Brantman received a call to go to the Horseshoe. He met Johnson there and Johnson introduced him to Sommers, saying, "Meet my man Sommers."

Johnson asked Brantman to repeat to Sommers what he had told him and Brantman did so. In the course of the conversation with Johnson and Sommers it was stated that Johnson's name was not to appear on the returns of the individuals as the employer. (2 R. 421-423, 429, 435-440.) The returns for most of the persons which Brantman stated he prepared were first prepared after the conversation with Johnson (2 R. 430-431), including the returns of Sommers and Kelly (2 R. 422-423). Although it is true that the foregoing conversation occurred about 1932, it was certainly relevant here, for it fixed the status of Johnson and his subordinates as of that time, and the jury was plainly warranted in assuming the continuance of that status during the years here involved in view of all the other facts before it.

Moreover, if all of the evidence summarized above is taken in the light most favorable to the Government, as it must be (*Glasser v. United States*, 315 U. S. 60, 80), it furnishes overwhelming support for the conclusion that during the period covered by the indictment Johnson had at least a dominant interest in the principal gambling houses involved. The evidence, however, showed much more. It revealed Johnson's interest to be that of the owner of the houses. The evidence pictured Johnson acting as the owner, and making statements which in the circumstances of this case were substantial admissions by John-

son that he was the owner. The statements to the revenue agents, the dispute over the Nationwide News rates and the complaint about politicians all contained such admissions.

Other factors in the case strongly supported the conclusion that Johnson was the owner. As will be later shown, the income of the gambling houses over the period from 1936 through 1939 averaged approximately \$775,000 a year. Johnson was the one who reported annual gambling income during these years, ranging from \$103,000 to \$256,000. The annual gambling income reported by Sornmers, Hartigan, Flanagan, and Kelly during the same period ranged from \$3,600 to \$19,000. By their very returns, therefore, the respondents portrayed Johnson in his true stature in their operations. Johnson was likewise the one who was able to spend \$145,000 in cash for a country estate and about \$700,000 in developing the Bon-Air Country Club. (*Infra*, pp. 66, 71-72, 102-107; chart.) The other respondents lived relatively modest lives (2 R. 458-459, 463-464, 469-470). Moreover, as will be shown in detail in Point III, *infra*, p. 91 *et seq.*, Johnson expended vast amounts in excess of his resources and reported income during at least three of the years in question; the jury could therefore fairly infer that the profits of the houses with which Johnson had been so closely identified constituted the source of those expenditures and that Johnson was the true owner of those houses.

From all of the Government's evidence, therefore, a substantial foundation as to Johnson's ownership of the gambling houses was built. The evidence was not trivial and isolated. The incidents related were individually strong and cumulatively powerful. The conclusion of ownership arising from the various incidents was not the result of mere speculation; they included many direct acts and statements indicating ownership. It is obvious that the true ownership of an illegal business elaborately concealed is not easily demonstrable. But certainly the evidence was more than sufficient to raise a jury question as to Johnson's ownership. (*Cf. United States v. Wexler*, 79 F. (2d) 526 (C. C. A. 2d), certiorari denied, 297 U. S. 703.)

Not only was a substantial case made out by the Government prior to the time it rested but at the conclusion of the defense testimony the Government's case was even stronger. At all times in the trial it was conceded that Johnson was a gambler and that his income was from gambling. He reported large amounts of income. The defense explanation of how Johnson obtained this large income from gambling was as follows: All of the houses principally in issue had a \$100 limit on individual bets at dice. Players on numerous occasions would wish to bet larger amounts. Johnson might be in the house. If not, Sommers or Hartigan or Kelly or Flanagan (depending on the house involved) would call Johnson. Johnson would then take over the table. The table

would be cleared and checked as to money, chips, etc. An amount of new dealing money would be left by the house for which Johnson would pay. Johnson would put down his bank roll, taking it from his pockets or from a box he carried. The play would then start with betting unlimited and with Johnson banking the game, that is, taking all bets. The houses' regular employees, "box man," "dealers," and "stick men" handled the game. Johnson might deal or act as box man or simply watch the game. At the end of the play the table would again be checked and Johnson would recover his bank roll and take all winnings. Such games were said to last a short while at times, and sometimes the whole night.⁷ (3 R. 793-794, 796-798, 801, 802-803, 820, 841, 879-880, 889-891.)

In support of that ingenious explanation, the defense produced evidence of the flimsiest char-

⁷ Not many explanations of the source of Johnson's income were open to him. The record discloses the commonly known fact of the odds in favor of the house in gambling at a dice table (3 R. 845-847) and it is obvious that Johnson could not have produced regular large winnings over a period of four years by playing independently at established houses against the house. Equally clearly, he could not have made the large sums of money reported solely by banking private games. This left as possible explanations only that he owned these houses, as the Government charged, that he owned some other large group of gambling houses (an explanation foreclosed by the evidence here), or the explanation he chose to make that in some way he banked part of the gambling at these gambling houses.

acter that was not only inherently incredible but was inconsistent in a material respect with a prior explanation made by Johnson. Surely, the jury was competent to pass upon the credibility of these witnesses, and determine for itself whether they were telling the truth.

Although the indictment covered a period of four years, and although a great many employees of the various houses would have observed these operations, if they had actually taken place, the defense called but three employees as witnesses to testify with respect to such activities (3 R. 793-794, 796-798, 801, 802-803). That testimony was so fragmentary and unsatisfactory that the jury was patently justified in rejecting it as a credible explanation. Moreover, although Sommers and Kelly stated that such occurrences took place in the houses which they claimed to own (3 R. 820, 841, 879-880, 889-891), Flanagan made no mention of any such procedure in his testimony. Sommers said that he arranged the games with Johnson to accommodate his customers who wanted to place higher bets than he could afford to back (3 R. 820). Kelly simply said that he was glad to have Johnson there for Johnson had a fine reputation and he was a small gambler trying to make a reputation (3 R. 890). Both testified that Johnson paid them nothing as a result of this arrangement (3 R. 841, 890-891).

Although this explanation may carry some special significance to the gambling initiate it appears highly dubious to the lay mind that actual owners of gambling houses would permit an outsider to profit from their customers by the use of their equipment and employees at the expense of interruption of their own play solely in return for some nebulous goodwill. And the improbability of this explanation is increased when it is recalled that Johnson's purported yield from the occasional big games which he claimed he banked far outweighed the reported profits from the regular play at all of the houses combined.

More than this, however, the defense as outlined at the trial was inconsistent in a very material respect with a prior explanation of Johnson's. In his statement to the revenue agents in 1939, introduced in evidence, Johnson said that when he handled gambling in the houses he took a piece of the play on a percentage basis, that there was no continuous arrangement but a specific arrangement was made each time and whatever the amount of money the others put up governed the percentage of winnings they took. (2 R. 414-416.) At the trial Sommers testified that when Johnson took over the table in the manner described he had no further interest in it (3 R. 820). Kelly testified that when he turned over the table to Johnson it was Johnson's and he stood the losses and took the winnings (3 R. 880, 891). Neither mentioned that he ever put up

part of the money or took a percentage of the winnings. None of the three defense witnesses who told of Johnson's taking over a gambling table said anything about the house taking part of a bet while Johnson played. In his testimony at the trial Johnson said that by the reference to percentages in his prior statement he meant that if a bet of \$100 were made the house was at liberty to take a part of it, say \$20, and in that case it would take twenty percent of the winnings immediately after the particular bet was over. He further said that these transactions took place quite a few times but that in comparison to the number of times he played they were rare. (3 R. 957-959.) The defense explanation of the source of Johnson's gambling income was further shaken by the fact that of the fifteen Government witnesses who said they had seen Johnson at the various houses none testified that they had seen him gambling. Ten of these witnesses were expressly asked or described what Johnson was doing when they saw him at the houses. Three specifically testified that they never saw Johnson gambling. (See record citations, *supra*, pp. 38-39.)

The Government's evidence thus forced Johnson to explain the source of his admittedly large gambling income or leave unchallenged the conclusion that he was the owner of the gambling houses and that these supplied his income. The weakness of his explanation buttressed the vast

amount of the Government's affirmative evidence that he was the owner of the houses. Since there was ample evidence to support the conclusion that Johnson owned the various houses in question, the jury was fully justified in attributing the profits of the enterprise to him. Cf. *United States v. Wexler*, 79 F. (2d) 526 (C. C. A. 2d), certiorari denied, 297 U. S. 703.

3. *Evidence as to the income of the gambling houses*

No permanent records of any kind were maintained by the gambling houses beyond a set of accounts for the restaurant at the Horseshoe (2 R. 459, 465, 469; 3 R. 941). As has been stated, however, horse-racing bets at the houses were first recorded by sheet writers on duplicate sheets (*supra*, p. 16). The cashier then recorded the payment of winning bets on the original sheet, and both duplicate and original sheets later went to the manager of the house (2 R. 178-179, 248-249, 281, 298, 330-331). The houses thus had an accurate record of all horse-race betting. These sheets, however, were all regularly destroyed (2 R. 299; 3 R. 825-827, 885-886, 941). Similarly, many of the houses kept records of amounts paid out at the other games, dice, roulette, etc., by means of pay-out checks and cashier's sheets (2 R. 300, 465-466; 3 R. 826-827, 886, 941, 945). These slips and cashier's sheets were likewise systematically destroyed (3 R. 826-827, 886, 941).

None of the respondents kept permanent personal records of their gambling income. All stated that they recorded monthly totals of gains. On the request of revenue agents, Johnson produced his monthly totals, Hartigan produced them as to one year, but Kelly supplied none. In testifying at the trial Sommers presented monthly records as to 1939 and Kelly as to 1937, 1938, and 1939.* (2 R. 412-418, 459, 465, 469; 3 R. 710-711, 736-737, 767-768, 772-773, 818-819, 824-825, 886, 948, 985.) None of the respondents turned over any books or records to the accountants to be used in the preparation of income-tax returns. All simply gave the accountants a lump-sum figure for the year's gambling income. (2 R. 96-97, 105-110, 420-421, 422-429.) None of the respondents kept bank accounts in which gambling income was deposited, although Johnson stated that he deposited some of his gambling income in bank accounts." (2 R. 411-412, 459, 463, 464, 468; 3 R. 948.)

* Johnson was advised by his accountant in 1933 or 1934 that the Government was demanding that all taxpayers keep complete books and records of their income (2 R. 420). In his statement to the revenue agents Johnson said he was never told to keep gambling records (2 R. 417).

* Johnson told revenue agents and Brantman at a conference on his income-tax returns in 1934 that he did not keep bank accounts of his entire business because he did not want to build up evidence against himself to be used for law enforcement (2 R. 433). Sommers was asked by a teller at the Northern Trust Company why he did not deposit checks in his account, and he told the teller that he did not want them in his account, that it would be charged against his income (2 R. 505).

In this situation the only possible method of proving the income of the gambling houses was that adopted by the Government of showing the amount of checks cashed and currency exchanged for the gambling houses at currency exchanges and banks.¹⁰ In summary, the amounts of these items disclosed by the evidence and charged by the Government to represent Johnson's income¹¹ are as follows.

1936

Checks cashed at Albany Park Currency Exchange.....	\$255,415.97
Currency deposited at Albany Park Currency Exchange....	6,700.00
\$100 bills received from Lawndale Currency Exchange....	11,600.00
Checks cashed at Northern Trust Company.....	111,578.60
Currency exchanged Northern Trust Company.....	100,000.00
Total income of gambling houses.....	<u>485,294.57</u>

1937

Checks cashed at Albany Park Currency Exchange.....	623,690.56
Currency deposited Albany Park Currency Exchange....	87,100.00
\$100 bills received from Lawndale Currency Exchange....	42,100.00
Currency exchanged Northern Trust Company.....	100,000.00
Total income of gambling houses.....	<u>852,890.56</u>

¹⁰ At no time have the respondents controverted the fact that the checks and currency involved represented transactions of the gambling houses here in issue. (See e. g., 2 R. 2.)

¹¹ Included in the computation of Johnson's income by the Government's expert witness were amounts for checks cashed by the defendant Creighton (4 R. 28, 30, 32). The inclusion of these amounts is not necessary to sustain the convictions and since Creighton was acquitted, the amounts identified with him have not been included in the present discussion or computations, except the relatively small amounts indicated in footnote 19, *infra*, pp. 60-61.

1938

Checks cashed at Albany Park Currency Exchange.....	376,783.14
Currency deposited Albany Park Currency Exchange..	141,000.00
\$100 bills received from Lawndale Currency Exchange..	19,800.00
Currency exchanged at Northern Trust Company.....	100,000.00
Checks deposited in North Shore National Bank (Lawrence Avenue Currency Exchange).....	66,305.29
Checks deposited in Central National Bank (Lawrence Avenue Currency Exchange).....	147,105.77
Total income of gambling houses.....	<u>850,994.20</u>

1939

Checks deposited at Central National Bank (Lawrence Avenue Currency Exchange).....	886,490.30
Currency exchanged at Northern Trust Company.....	40,000.00
Total income of gambling houses.....	<u>926,490.30</u>

Albany Park Currency Exchange.—We have previously related the manner in which Sommers cashed checks and exchanged currency at the Albany Park Currency Exchange and the identification of this business with the Horseshoe, Lincoln Tavern, Harlem Stables and D & D Club (*supra*, pp. 27-29). This business continued at the exchange from June 1936 to July 1938 (2 R. 477). The records of the exchange showed that checks cashed on behalf of Sommers from June through December 1936 totaled \$255,415.97 (Govt. Exs. X-139-X-145; 2 R. 480-481). Similar checks were cashed in 1937, between January and September, in the amount of \$623,690.56 (Govt. Exs. X-146-X-154; 2 R. 481-482, 4 R. 30). From January 1938 until the termination of the business in July of that year checks in the amount of \$376,763.14 were cashed (Govt. Exs. X-158-

X-164, X-191a, etc.; 2 R. 481, 482-483, 497; see also 2 R. 484-485). The owner of the exchange testified that most of the checks cashed were paid by the exchange in \$100 bills (2 R. 479).

The owner of the Albany Park Currency Exchange likewise stated that Sommers exchanged currency on two occasions in 1936 totaling \$6,700. During 1937 deposits of currency for exchange totaled \$87,100. In 1938 currency in the amount of \$141,000 was exchanged. (2 R. 486-487.) In the Government's computation of income, amounts were eliminated from this testimony as to currency exchanged to allow for occasional redeposits of excess currency by the exchange itself (2 R. 492, 498; 4 R. 27, 30). According to the exchange owner's testimony, one-half of the currency exchanged on behalf of Sommers was paid out by the exchange in the form of \$100 bills (2 R. 499; see also 2 R. 500-501; Govt. Ex. X-191a, etc.).

Northern Trust Company.—Two tellers of this bank testified that they cashed checks and exchanged currency for Sommers every other day or about twice a week during a period from 1934 to 1936 (2 R. 503-504, 506-508). The bank records showed that from January to May 1936 Sommers cashed checks in the amount of \$111,578.60 (Govt. Exs. X-170-X-171; 2 R. 503-504, 507-508). A special paying teller at the same bank testified that from 1936 through part of 1939 he exchanged currency for Sommers approximately three times a month over periods of six months. He stated

that the amounts exchanged totaled approximately \$100,000 for each of the years 1936, 1937, and 1938, and \$40,000 for 1939. A portion of these amounts was paid to Sommers in \$100 bills. (3 R. 604-605.)

Lawndale Currency Exchange.—The manager of the Lawndale exchange testified that beginning in 1936 he regularly cashed checks and exchanged currency for Flanagan and one of his subordinates¹² at the 4020 Ogden Club. The witness stated that when currency was exchanged he paid Flanagan or the employee in \$100 bills and that there were no other customers of the exchange that ordered \$100 bills. (3 R. 552-554.) The records of the exchange showed that \$100 bills were handled in the amount of \$11,600 in 1936, \$42,100 in 1937 and \$19,800 in 1938 (3 R. 560-562, 565-566; Govt. Exs. X-172d, etc., X-173c, etc., X-174a, etc.).

Lawrence Avenue Currency Exchange.—The opening of this exchange by Brown in July 1938, and its operation through September 1939, have previously been described (*supra*, pp. 29-30). The books and records of the exchange were apparently concealed or destroyed and could not be secured by the Government.¹³ Sommers, Hartigan, and Kelly,

¹² Couch, the doorman and handyman at the 4020 Ogden Club (3 R. 948).

¹³ An employee at the building where the exchange was located testified that Bernice Downey, Brown's partner in the exchange, and her sister, took the books and records from the exchange about three weeks after the exchange closed in 1939 (3 R. 597-598; see also 3 R. 588-589). The

however, admitted that checks were cashed at the Lawrence Avenue Currency Exchange which represented transactions for the gambling houses claimed to be owned by them (2 R. 459, 463, 467-468; 3 R. 816-817, 837-838, 842, 883-884). The Government was able by other evidence to show that the checks of the gambling houses were recorded in an account of the exchange entitled "Reserve for uncollected funds" and that the total of checks passing through this account for the period of the operation of the exchange was \$1,100,000. The respondent Brown admitted to the accountant who audited the exchange books, that all of the funds in the "Reserve for uncollected funds" account were from one source and that that source was Mr. Johnson. (2 R. 535-536.) And although that admission was chargeable only against Brown, the evidence as to the method of business of the exchange permitted the jury to draw the same conclusion against the other respondents as to the nature of the reserve account. In summary the method by which the exchange handled the gambling checks was as follows:

Each morning when the exchange opened Bernice Downey, Brown's partner, brought checks into the exchange. These apparently were picked up by her at the Horseshoe. They were totaled by

Downey sisters testified that they had been subpoenaed to produce the books but stated that they had never had them. Bernice Downey testified that she last saw the books at the exchange when it closed (3 R. 695-696).

her in the morning and recorded in the exchange books. Early in the afternoon the checks were picked up by the armored car delivery service. (3 R. 596-598.) Later in the afternoon Brown or Miss Downey telephoned a special paying teller at the bank in which an account for the exchange was maintained and gave an order for the amount and denominations of currency to be delivered. The bank teller prepared the order and the currency was delivered to the exchange by armored car service the following day. (3 R. 596-597, 598, 611-612.) After the delivery of the currency to the exchange Brown divided it into separate piles. Sommers and a man named Fred¹⁴ then called and took the money¹⁵ (3 R. 596, 598).

From this course of business it was apparent that the gambling checks were received by the exchange on one day and forwarded to its bank for collection and that payment was made on the checks by the exchange on the following day. The accountant for the exchange testified that the exchange had two types of check-cashing transac-

¹⁴ Apparently Fred Gitzen, an employee of Creighton's (3 R. 869).

¹⁵ From July 21, 1938, to August 16, 1938, the method of handling the transactions between the exchange and the bank was of a somewhat different character (3 R. 606-607); on the latter date, Brown transferred the exchange account to another bank (3 R. 608-609). The method described above was that used subsequent to August 16, 1938. The methods by which Sommers and Miss Downey operated, however, apparently did not vary during the entire operation of the exchange.

tions, one in which cash was paid out immediately and the other in which cash was not paid immediately but in which the check was forwarded for collection and cash paid out on the following day. Checks included in the latter type of check transaction were totaled by the exchange and the sum total credited to the account "Reserve for uncollected funds." Checks on which the exchange made immediate payment were not entered in this account but were listed on a teller's blotter. (2 R. 535.) The "Reserve for uncollected funds" account thus included a record of the gambling checks and was exclusive of other checks cashed immediately by the exchange. Since ordinary accounting practice would require that checks from different sources on which payment was not made immediately be entered in separate reserve accounts (2 R. 536), and since the Lawrence Avenue exchange had only the one reserve account, the jury might properly have concluded from this method of accounting,¹⁶ that all checks entered in the "uncollected funds" account were from a single source, i. e., the gambling houses.¹⁷ Moreover,

¹⁶ No change appears to have been made in the method throughout the history of the exchange (2 R. 532-533, 535-537).

¹⁷ The character of the "uncollected funds" account was further indicated by the fact that Brown apparently did keep an itemized record of the checks entered in the account, not in the regular exchange books, but in two small black books of which he and Miss Downey kept personal possession (2 R. 533, 538; 3 R. 597).

that conclusion is fortified by the fact that this account contained only entries of totals of groups of checks and not separate entries of single checks, whereas the teller's blotter on which checks paid immediately were entered included a detailed record as to each check (2 R. 535, 543-544). The accountant for the exchange further testified that the checks entered in the "Reserve for uncollected funds" account during the period of operation of the exchange totaled \$1,100,000 (2 R. 537). The total of all checks cashed by the exchange during the period, as evidenced by records of its bank deposits, was \$1,469,213.30 (Govt. Exs. X-178, X-183).¹⁴

It was shown further that the bulk of the currency drawn by Brown for payment on checks cashed consisted of \$100 bills. From July 21, 1938, to August 16, 1938, Brown maintained an account for the exchange with the North Shore National Bank. During this period he received approximately \$85,000 in cash, mostly in \$100 bills. (3 R. 606.) From August 16, 1938, to the closing of the exchange in October 1939, Brown employed an account in the Central National Bank. He withdrew currency from this bank almost daily during that period and his withdrawals of cur-

¹⁴ There was some testimony (2 R. 537) to the effect that the total cash turnover for the period in question was \$2,600,000. But that figure, even if accepted, must represent exchanges of currency, etc., in addition to the check-cashing transactions described above.

rency included \$100 bills of an average daily total of from \$3,000 to \$5,000. (3 R. 611-612.) In the light of the conceded fact as to the cashing of the gambling house checks at the Lawrence Avenue Exchange and the practice of payment on those checks in \$100 bills while the business was previously being conducted at the Albany Park Currency Exchange (*supra*, pp. 53-54), the evidence just recited as to the amount of the gambling checks cashed at the Lawrence Avenue Exchange is corroborated by the use of \$100 bills by that exchange. For, on the basis of the stated average daily withdrawals of the Lawrence Avenue Exchange of \$100 bills, a conservative estimate of the total of such bills used during its period of operations would approximate the \$1,100,000 total of the "Reserve for uncollected funds" account. (See also 3 R. 612, 693-694.)

The percentage of gambling checks thus cashed (\$1,100,000) by the exchange to its total of all checks cashed (\$1,469,213.30) was 74.87. The Government accountant has computed the amount of gambling checks cashed in each of the years 1938 and 1939 by applying this percentage to the total of all checks cashed by the exchange in each of those years as shown by the bank records (4 R. 33, 34). The resulting amounts are those included in the preceding summary.¹⁹

¹⁹ Although there were apparently included in the gambling checks cashed at the Lawrence Avenue Currency Ex-

The foregoing transactions at the various currency exchanges fall into two major categories: (a) the cashing of checks, and (b) the exchange of currency. We submit that the jury was fully warranted in concluding that both the amount of checks cashed and the amount of the currency exchanged represented with substantial accuracy income to the houses.

As to the checks.—The record discloses and the respondents do not and could not deny that customers cash checks in gambling houses to pay losses when their cash is gone (2 R. 215–216, 219, 220–221, 405, 3 R. 546, 548–549, 816, 879). The respondents contend, however, that they cashed accommodation checks for customers and checks which were in part losses to the customers and in part accommodation (2 R. 463–464, 468; 3 R. 816, 879). They argue, therefore, that the mere cashing of checks is not sufficient evidence of income. Although accommodation checks may conceivably have been cashed at times in small amounts, it was entirely reasonable to conclude that in view of the large amounts here involved the respondents would assume the col-

change some checks cashed by Creighton, the exclusion of these checks from consideration here would not affect the convictions of these respondents. Creighton's testimony as to the number of checks cashed by him at the Lawrence Avenue Exchange was that he cashed "some checks" or "a few checks" there and that he did not cash them every day. (3 R. 858–859, 868–869.)

lection risks inherent in gambling checks only where required to do so to collect for the customers' losses and that the accommodation cashing of checks would be only a minor factor.²⁰ Moreover, it was reasonable to infer that in the typical situation the patron would tender a check only after he had lost the cash which he had brought with him. Thus, the acceptance of a check by the gambling house would indicate not only that the amount of the check itself represents winnings to the house, but that the patron had already lost his cash to the house. Accordingly, the amount of the accommodation checks was probably far more than offset by the amount of cash lost by the patrons at the gambling houses before they found it necessary to pay off additional losses with checks. The receipt of a check from a customer by a gambling house was certainly substantial evidence of the house's receipt of income.

As to the exchange of currency.—The great bulk of the income attributed to the gambling houses was reflected in the checks just discussed; the re-

²⁰ The respondents indicate the true strength of their argument by further contending that they cashed checks for persons in the neighborhood (3 R. 816, 842, 879). It may well be asked how many neighboring tradesmen and workmen would seek out a gambling house and negotiate entrance with an accompanying searching for firearms (2 R. 416), in order to cash a check.

mainder consisted of currency exchange transactions.²¹ A substantial amount of the currency so charged as income was received as a result of the exchange of smaller bills for \$100 bills. The houses all had a limit of \$100 on single bets, and their working money, that is, money used on the tables in gambling, was of lesser denominations (3 R. 792-793, 795, 803, 820, 879, 885, 939). It was therefore reasonable for the jury to conclude that at least as to the \$100 bills the money was taken out of the business as gambling winnings of the houses, and was not merely an attempt to replace old money with new for use on the tables. The respondents, however, argue that the exchanging of currency was merely a turn-over in their bank rolls²² and that \$100 bills were used at the houses to pay winnings over that amount (3 R. 792-793, 795, 803, 816, 879, 939). Assuming that this might happen, the jury certainly could have

²¹ Indeed, the convictions may be sustained even if the exchanges of currency be completely eliminated from consideration. Accordingly, if the Court should conclude that the evidence with respect to the checks was sufficient, it is immaterial whether the evidence with respect to the exchange of currency was sufficient.

²² In his prior brief to this Court the respondent Johnson indiscriminately argues that all of the Government's evidence as to amount of income could equally be called a mere turn-over of bank roll (Br. 67, 72). Clearly, however, the cashing of customers' checks is not a regular bank roll turn-over.

inferred that the very quantity of money in \$100 bills taken by the houses made the respondents' explanation implausible, and in any event it had the advantage of judging their veracity from their demeanor on the witness stand. Moreover, any inaccuracy in this respect in the Government's proof of income would undoubtedly be offset by additional income which the houses must have earned and which was not reflected in the currency exchange transactions.

The foregoing discussion shows that there was sufficient evidence for the jury to conclude that the checks cashed and currency exchanged, at least in the larger denominations, represented winnings or profits to the gambling houses. Indeed, the actual winnings or profits may have been considerably in excess of these amounts, for it is reasonable to assume that very substantial amounts of cash lost by the patrons to the gambling houses never passed through any of the currency exchanges, but were simply withdrawn directly from the till as profits. Moreover, as we shall undertake to show in Point II, *infra*, pp. 82-91, in response to Question 2 of the Court's order, the jury could reasonably have concluded that the winnings or profits reflected in the check cashing and currency exchange transactions repre-

sented with substantial accuracy taxable net income of the gambling houses.

4. *Summary of evidence as to Johnson on the substantive counts*

In conclusion as to the respondent Johnson, we submit that the record contains compelling evidence of the operation of the various gambling houses in a manner showing unitary ownership, control and operation. Equally strong evidence was introduced which demonstrated that Johnson had an interest in the gambling houses. This interest of Johnson's was shown to be that of ownership by evidence of numerous and repeated direct acts of ownership on the part of Johnson and by direct admissions of ownership by Johnson. Circumstantial evidence likewise strongly reinforced the direct evidence of Johnson's ownership.

The income of the gambling houses thus shown to be owned by Johnson was proven by credible evidence. The showing of ownership made proper the charging of that income to him.

The amount of gambling income reported by Johnson, the description of this income on his returns and the amounts of income of the gambling houses demonstrated by the Government for

the years covered by the indictment are as follows (Govt. Exs. R-10—R-13; *supra*, pp. 52-64) :

Year	Description of occupation	Income from business (gambling) reported	Income of gambling houses shown
1936.....	None shown.....	\$145, 165. 70	\$485, 294. 28
1937.....	Speculator and Farmer.....	255, 240. 70	852, 800. 56
1938.....	Speculator and Farmer.....	103, 265. 70	850, 994. 20
1939.....	Speculator and Farmer.....	256, 710. 00	926, 490. 30

Given the ownership of the gambling houses by Johnson and the large unreported income, there could be no doubt of Johnson's wilful intent to evade the taxes on the unreported income. The elaborate concealment of ownership during the period covered by the indictment and thereafter, the concealment of income by failure to keep books and records and bank accounts, the filing of false income-tax returns by Johnson and the denial of ownership by Johnson to revenue agents, all make this plain.

On all phases of the case, therefore, including the question of the ownership of the gambling houses, there was substantial evidence which warranted submission by the trial court to the jury of the charges made as to Johnson in each of the four substantive counts. But even if it should be held that all of the evidence recounted above was insufficient to charge Johnson with having received the profits of the gambling houses, a jury question was clearly presented as to Johnson's guilt on the second, third, and fourth counts, covering the years 1937, 1938, and 1939, under the Government's evi-

dence as to Johnson's expenditures during those years. That evidence will be discussed in detail in Point III, *infra*, p. 91 *et seq.*

5. *Evidence as to the respondents Sommers, Hartigan, Kelly, and Brown on the substantive counts*²³

The evidence bearing on the guilt of the respondents Sommers, Hartigan, and Kelly follows identical patterns and may be discussed together. The evidence relating to the respondent Brown is of a different character and will be separately considered.

a. *Sommers, Hartigan, and Kelly.*—All of the evidence previously described of the unitary operation and ownership of the gambling houses claimed to be owned by these respondents is available to support the charges of their aiding and abetting Johnson's attempts to evade. As has been stated, the evidence of these respondents working interchangeably as bosses at the various gambling houses in itself destroyed their defense of their separate ownership of the houses and revealed them in their true light as employees. All of the evidence of direct acts of ownership by Johnson and all of the circumstantial evidence

²³ As we advised the Court in our previous brief, we are informed and are satisfied that Flanagan is now dead. Accordingly no detailed discussion of the evidence as to his guilt will be made. Sufficient evidence has been previously related to justify charging Johnson with the amount of currency exchanged by Flanagan (*supra*, pp. 13, 15-18, 21-22, 23-24, 27, 30, 32-33, 38, 39, 41-42, 55).

of Johnson's ownership likewise supports their convictions. In place of the direct admissions of ownership by Johnson are a number of declarations as to Johnson's ownership of the houses made by these respondents and chargeable against the declaring respondent.

A customer at the Horseshoe testified that in July, 1937, he asked Sommers for a loan. Sommers told him that he would have to get in touch with the boss. Sommers then made a telephone call and afterwards made the loan to the witness. The witness asked Sommers who this big boss was and Sommers told him it was Johnson. (3 R. 545-546.) Sommers discharged an employee at the Horseshoe for stealing quarters at the tables. He told the employee that "the only one that can take care of you now is the big boy, you will have to see him about it." The witness stated that he knew that "the big boy" was Johnson. (R. 356-357.) A customer testified that on one occasion at the Horseshoe an argument arose at a gambling table and that Sommers informed the participants that if they had any complaints to make them to Johnson (3 R. 567-568). The incident in which the same witness protested about the reduction of a gambling limit at the Horseshoe and was told by Sommers to see Johnson, has previously been related (3 R. 566-567). When the check cashing business of the houses was changed from the Albany Park exchange to the Lawrence Ave-

nue exchange in 1938 Sommers told the owner of the Albany Park exchange it was done because Brown was a tenant in "their" building (2 R. 477; see also 2 R. 225).

The statements of Johnson made in the course of the settlement of the dispute over the ownership of the Harlem Stables and the conversation of Johnson with the accountant Brantman in which it was stated that Johnson's name was not to appear as the employer on the income tax returns of the houses' employees were made in the presence of Sommers. (*Supra*, pp. 34-36, 42-43.) They are, therefore, applicable to the charges against Sommers.

On one occasion at the Lincoln Tavern, Hartigan called together the "shills" employed there, told them of "shill" money (specially marked) disappearing from the table and warned them that if it continued he would fire the crew (2 R. 355-356). Hartigan further said (2 R. 356), "And again, I want to remind you that when you go home, or come in here, or on your way amongst yourselves, or amongst the public, if you are ever asked who you are working for, don't say that you are working for Mr. Bill Johnson, and don't discuss about it. Don't discuss anything that is going on here, not only amongst customers but even among yourself. Talk about something else." One witness testified that in 1934 Hartigan was telling him about a gambling incident and that Hartigan said

it happened before he was working for Bill. The witness stated that Johnson was called Bill so often he assumed the conversation concerned Johnson (2 R. 300-303, 304-305). Hartigan hired two employees in response to letters addressed to Johnson and one in response to a note reading, "Please put bearer to work" and signed "Bill" (2 R. 319-321, 326, 345-346).

Kelly's income-tax return for the year 1934 was investigated by the office of the Collector of Internal Revenue and a call letter sent to him. Brantman, the accountant, thereafter appeared on behalf of Kelly on November 25, 1935. In the course of the conference, Brantman told an auditor for the Collector that he did the accounting for the employer of Kelly. (3 R. 706-707.) Brantman has previously been shown to have acted as accountant for Johnson from 1927 through 1936 (*supra*, pp. 41-42).

Given the ownership of the gambling houses by Johnson, therefore, and his failure to report a large part of the income therefrom, the guilt of the respondents Sommers, Hartigan, and Kelly in aiding and abetting the attempted evasion becomes clear. Each of these respondents during all of the years covered by the indictment participated in the operation of the gambling houses in question in a manner to conceal Johnson's financial interest in the houses and the amount of the income of the houses.

Each of the respondents filed incomplete and misleading income-tax returns for each of the years covered by the indictments. The description of income, occupation, and amount of income reported by each of the respondents as revealed by their returns introduced into evidence were as follows:

SOMMERS

(Govt. Exs. R-35—R-42)

Calendar year	Description of occupation on return	Description of gambling income reported	Amount of gambling gross income reported	Amount of net taxable income reported
1932	None shown	Misc. Commissions	\$8,313.00	\$7,155.25
1933	None shown	Misc. Betting Commissions	6,492.00	5,377.40
1934	None shown	Misc. Speculative Earnings (Salary).	6,785.00	5,977.00
1935	Manager	Salaries, wages, commissions, etc.	4,880.00	4,402.10
1936	Restaurant and Speculator	Misc. Income as Speculator	11,000.00	9,482.40
1937	Restaurant and Speculator	Other Income Speculator	19,274.38	9,942.50
1938	Restaurant and Speculator	Other income Speculator	8,200.00	9,100.79
1939	Speculator	Other income	11,243.00	12,529.16

HARTIGAN

(Govt. Exs. R-52—R-57)

Calendar year	Description of occupation on return	Description of gambling income reported	Amount of gambling gross income reported	Amount of net taxable income reported
1934	Manager	Misc. Speculative Income (Salary).	\$13,700.00	\$12,840.00
1935	None shown	Miscellaneous Income	8,600.00	274.60
1936	Manager	Misc. Speculative Income Est.	15,875.00	15,728.00
1937	Speculator	Other income Speculator	13,628.00	13,422.50
1938	Speculator	Income from business or profession.	11,500.00	11,376.00
1939	Gambler	Income from business or profession.	10,100.00	15,806.31

KELLY

(Govt. Exs. R-14—R-19)

Calendar year	Description of occupation on return	Description of gambling income reported ¹	Amount of gambling gross income reported	Amount of net taxable income reported
1934	None shown	Misc. Commission Earnings (Salary).	\$4,745.00	\$4,365.00
1935	Clerk	Salaries, wages, commissions, etc.	1,800.00	1,607.00
1936	Manager	Salaries, wages, commissions, etc.	3,655.00	3,588.50
1937	Speculator	Other income Speculator	9,135.00	9,006.50
1938	Speculator	Income from business or profession.	10,435.00	10,364.50
1939	Gambler	Income from business or profession.	10,324.00	10,280.50

In December 1939, Sommers and Hartigan each made a formal statement to revenue agents (2 R. 460). Sommers at that time stated that he was the proprietor of the Horseshoe and Dev-Lin, that nobody was associated with him in his business; that he was alone and had no partner; that he had no relations with Johnson other than Johnson coming to his place to gamble; that Johnson had no connection with the operation and that no one else had any interest in it (2 R. 467, 470).

Hartigan said that he owned the Harlem Stables, that no one was connected with him in the operation and that he was the sole owner; that he had no connections with any other gambling houses, no connection with the Horseshoe or Dev-Lin and no financial transactions through it, that he had never been the manager of any place of business; that he never worked for anyone

else within the last ten years and that he never got a salary from Johnson, that he operated the business solely on his own account, no one else was interested in it, that Johnson had no interest in the business operated at the Harlem Stables and had had none during the last three years; that Johnson had no connection and no one else was interested in it, and that he called in Johnson when the crap games got too heavy but that Johnson was not a partner (2 R. 462-466).

Kelly gave a similar statement to Government agents on January 3, 1940 (2 R. 457). He stated that he was the owner of the D & D Club and had been for a little over three years, that nobody was associated with him in his business, that Johnson had no interest in his business but gambled there, that he had no interest in any other gambling house (2 R. 458-460).

In operating the gambling houses in a manner to conceal the income therefrom and Johnson's ownership of that income, these respondents must have known and intended that Johnson would thereby be assisted in concealing this income. In filing incomplete and misleading personal income-tax returns which likewise aided in this concealment, their intention in this respect is made more plain. If any doubt remained, their making of false statements to Government revenue agents denying any interest or ownership in Johnson established beyond doubt their intention to aid John-

son in attempting to evade his income taxes for the years here in question. Their intention to aid Johnson's criminal purpose having been established, any of their acts of concealment which have been enumerated was sufficient to sustain their conviction. Each was shown to have performed acts of concealment in or relating to each of the years covered by the indictment. Further, all of these acts were directed toward a continuing concealment of Johnson's interest in the gambling houses and affected all of the years named in the indictment.

The ruling of the court below (1 R. 195-196) that the evidence was not sufficient to support the convictions of the codefendants on the first four counts proceeds upon a misunderstanding of the crime with which they were charged. Since the court found nothing in the record to the effect that the co-defendants had anything to do with the preparation of Johnson's returns, it assumed that there was no evidence to sustain the charge against them. But the co-defendants were not charged with assisting in the preparation of false returns. They were indicted primarily for aiding and abetting Johnson in his attempt to evade and defeat his tax. The aiding and abetting consisted, not of assisting in the preparation of his returns, but rather of their collaboration with him in a course of conduct that made it possible for him to attempt

to evade the taxes in question.²⁴ That their collaboration was wilful is shown by their statements to the revenue agents who interviewed them about their gambling activities and their relations with Johnson. The jury was plainly justified in concluding that their assistance to Johnson was directed not merely at avoidance of state or local prosecution for gambling, but also at an attempt to evade and defeat his Federal taxes.

b. Brown.—The theory of the Government's case as to the respondent Brown was that he operated the Lawrence Avenue Currency Exchange during 1938 and 1939 on behalf of the other respondents as a further means of aiding in the concealment of the ownership and amount of income of the gambling houses. We have already described the opening of the Lawrence Avenue exchange by Brown in July 1938 in a bank building owned by Johnson (*supra*, pp. 29-30, 55-60). The Lawrence Avenue exchange was located a short distance from the Albany Park exchange. When Brown informed the owner of that exchange that he was going to open up the Lawrence Avenue

²⁴ The court's ruling on the sufficiency of the evidence against the aiders and abettors on the first four counts is closely related to its erroneous ruling on whether they were properly charged in the indictment. It erred in both instances in assuming that the essence of the crime was the filing of a false return, rather than the attempt to defeat and evade. Its error in this respect is more fully discussed in our original brief at p. 43 *et seq.*

exchange, the owner protested that there was not room enough for the two exchanges, but Brown told him that he had some outside business and would not interfere with the other exchange. (2 R. 478.) Brown had previously been a teller in a bank and had come to know Johnson and Hartigan there (3 R. 615, 616, 618-620).

Brown ostensibly opened and operated the exchange in partnership with Bernice Downey. All of the capital of the business was shown on the opening entries of the exchange business as being from Brown. About three months later the capital account was split and applied half to Brown and half to Miss Downey. During the first year the profits of the exchange were divided equally on the books. For 1939 the profits were divided two-thirds to Brown and one-third to Miss Downey. (2 R. 536.)

In testimony given by Brown to the grand jury in January of 1940 (2 R. 523-524, 527) he stated that he was out of work in 1938 and approached Hartigan with the idea of starting a currency exchange. Later Hartigan told Brown to go ahead with the exchange and that he, Hartigan, would invest some money and could direct some business to the exchange. Hartigan advanced some money but on the condition that his niece, Bernice Downey, work in the exchange to look after his interest. Brown had Miss Downey do clerical work and made her a partner on the exchange books. (3 R. 620-623, 664-666.)

The manner in which gambling checks were cashed at the Lawrence Avenue exchange has already been related (*supra*, pp. 55-60). Brown stated to the grand jury that after the exchange opened Hartigan introduced Sommers, Kelly, and Creighton to him and told them to bring their checks to him. They or their employees thereafter regularly brought in checks to be cashed and currency to be exchanged. In addition, Brown secured credit reports on various persons cashing checks at Hartigan's request. Brown stated that the gambling checks represented approximately sixty percent of his business at the exchange and that the rest of the business was business off the street. (3 R. 621-622, 648, 649-658.)

As has been shown, the gambling checks were credited by the exchange to an account entitled "Reserve for uncollected funds." Brown described this method of crediting gambling checks to the grand jury (3 R. 649-650, 653-654). In addition, Brown kept records showing whether individual gambling checks came from Sommers, Hartigan, Kelly, or Creighton (3 R. 653). At the time the bookkeeping system for the exchange was being set up, Brown told the accountant preparing the books that all of the entries in the uncollected funds account were from one source. At a later time Brown told the accountant that the source of the fund was Mr. Johnson (2 R. 535-536).

When Brown originally opened the exchange he deposited checks for collection in his account with the North Shore National Bank. This bank shortly thereafter asked him to take out his account because too many of the checks deposited were returned for insufficient funds. (3 R. 642-643.) Brown then found difficulty in establishing a banking connection for his exchange because of the opposition of a currency exchange association acting on the complaint of the Albany Park exchange which had lost the gambling business to Brown. To secure a banking connection Brown went to Goldstein, an attorney who had acted for Johnson in purchasing the building in which Brown's exchange was located. (2 R. 56-57.) Thereafter Brown was able to open and operate an account at the Central National Bank. Brown paid Goldstein no fee. (3 R. 642-647, 662-666.)

Brown closed the exchange on September 30, 1939. Brown's accountant and auditor on going to prepare the closing entries asked Brown why he was closing. Brown told the accountant that Miss Downey was thinking of getting married. He also said he had lost Mr. Johnson's account. The accountant pointed out that Brown had a large amount of other business but Brown said nothing to this and was apparently determined to close up. (2 R. 537.) Brown testified to the grand jury that he closed because business was slow and Hartigan's business was getting thinner. He

stated that Hartigan had told him they might close and that he, Brown, would not have any business. (3 R. 624-625.) Later on in his grand-jury testimony Brown admitted that Hartigan had told him there would be no more checks (3 R. 668-669).

As we have indicated, a few weeks after the exchange closed Miss Downey and her sister took the books of the exchange away from the building but on being called as witnesses each denied any knowledge of the whereabouts of the books and records (footnote 13, *supra*, pp. 55-56). Before the grand jury Brown testified that early in October, two or three days after the exchange closed, he destroyed the books and records by tearing them up and throwing them in the furnace at the exchange building where they were burned (3 R. 628, 640-642, 648, 649, 657, 673). The janitor at the exchange building who was there every day and who took care of the furnace, testified that he never saw Brown tearing up papers or the exchange records and that he saw no evidence of papers being burned in the furnace (3 R. 599). Brown produced before the grand jury cancelled money orders, a record of money orders issued, and a profit-and-loss statement for the exchange but produced no other records such as the record of checks cashed and correspondence (3 R. 638-641).

On November 1, 1939, a revenue agent, Clifford, talked over the telephone with a man who said

that he was Brown and that he operated the Lawrence Avenue Currency Exchange. The agent said he would like to examine the records of the exchange and was told that the records had already been destroyed. The agent asked whether he could nevertheless talk about the records and made an appointment for that afternoon. At the time of the appointment a man who said he was Brown called the agent and said he could not make the appointment but that he would be down the next morning. The next morning a woman who called the agent said she was Mrs. Brown and that Brown had gone out of town. (4 R. 8-9, 11-12.)

Before the grand jury Brown admitted that Clifford "made contact" with him in October of 1939 and that he left Chicago the afternoon of the day that Clifford called him (3 R. 629, 630-631). He described going rapidly from city to city outside of Chicago during the following week or week and a half (3 R. 631-634). When he returned to Chicago he stayed at his brother's home for a period of six or seven weeks (3 R. 634). Brown appeared before the federal authorities when a summons was left at his brother's house (3 R. 635-636).

Brown was convicted on the third and fourth counts involving the years 1938 and 1939. As shown above, the evidence against him was strong. He admitted to his accountant that the large account for "uncollected funds" was that of John-

son's gambling houses. His entire method of operation and elusive dealings with the revenue agent showed he was wilfully aiding in concealing the amount of the income of the gambling houses and Johnson's interest therein. There was more than ample evidence to sustain the judgment of conviction as to him.

B. EVIDENCE ON THE CONSPIRACY COUNT

All of the foregoing evidence in part A is applicable to the conspiracy count in the indictment.

The conspiracy charged was one to defraud the United States of Johnson's income taxes for the years 1936-1939. The indictment alleged that the conspiracy was a continuing one, beginning prior to January 1, 1936, and extending to the date of the filing of the indictment (March 29, 1940). The signing and filing of income-tax returns by Johnson, the operation of the Lawrence Avenue Currency Exchange by Brown and the cashing of checks at that exchange by Sommers, Hartigan, and Kelly were included in the overt acts alleged. (1 R. 2. 17-25.)

Taking the declarations and statements by the various respondents solely as to the declarant, the entire evidence established a concert of action by all of the respondents in operating the gambling houses and the Lawrence Avenue Currency Exchange in a manner to conceal Johnson's interest in and the income of the houses, in filing

incomplete and misleading income-tax returns and in making false statements to investigating revenue agents and the grand jury as to Johnson's interest in the houses. The concerted action must have been directed toward defrauding the Government of Johnson's income taxes and made plain the agreement of the parties toward this end. Cf. *Glasser v. United States*, 315 U. S. 60, 76-81. Substantial evidence of a conspiracy having been produced, the declarations of each respondent became chargeable against the co-conspirators. Overt acts charged were shown by uncontested evidence. The commission of but one overt act, in pursuance of the conspiracy, was sufficient to sustain the convictions. *Hyde v. United States*, 225 U. S. 347, 359. On all of the evidence, a jury question was clearly presented as to the conspiracy charge.²⁵

II

IN THE CIRCUMSTANCES OF THIS CAUSE PROOF OF CHECKS CASHED AND CURRENCY EXCHANGED WAS SUFFICIENT TO ESTABLISH THAT NET INCOME RESULTED FROM THE OPERATIONS OF THE GAMBLING HOUSES

The Court's second question is whether in the circumstances of this cause proof of gross receipts

²⁵ Brown was properly convicted on the whole conspiracy in any event for his participation after 1938. *United States v. Manton*, 107 F. (2d) 334, 848 (C. C. A. 2d), certiorari denied, 309 U. S. 664; *Laska v. United States*, 82 F. (2d) 672 (C. C. A. 10th), certiorari denied, 298 U. S. 689.

is sufficient to establish that net income resulted from the operation of any enterprise in which respondent Johnson is alleged to have been interested. The Government has charged that Johnson was the owner of the principal gambling houses previously described.

At the very outset, it should be kept in mind that the maintenance of the gambling houses was illegal, and even if there had been no proof whatever of gross receipts the jury could reasonably have concluded that so extensive an illegal enterprise would not remain in operation for so long a period of time unless it were profitable, and indeed unless the net profits were commensurate with the risks involved. But the prosecution's case did not have to rest upon anything as general as that. With painstaking detail it undertook to show the profits of the enterprise through the check cashing and currency exchange transactions. And in Point I, A, 3, *supra*, pp. 52-64, we discussed that evidence, showing that it was amply sufficient to establish that the checks cashed and currency exchanged represented winnings or profits to the gambling houses. We shall now go further, in response to Question 2, and show that the evidence was sufficient to establish that the houses realized *net* profits.

It will be recalled that the major part of the currency received on the cashing of checks and the exchange of other currency was in the form of \$100 bills (*supra*, pp. 53-60). This fact alone, when

considered in the setting of this case, lends strong support to the conclusion that the funds so received represented net income. The persistence with which the \$100 denomination appeared indicated that it had special significance here. The houses maintained no bank accounts, and it was entirely reasonable to infer that the cashing of checks and exchanging of currency were simply the respondents' method of segregating the net profits of the houses from other money taken in at the gambling tables and used for current running expenses. The conversion of gambling receipts into currency of large denominations was the equivalent, under the respondents' practice of keeping no bank accounts, to bank deposits.²⁶ (Cf. 3 R. 938-939, 948.) And evidence as to bank deposits has universally been held sufficient to raise a jury question as to net income, particularly when such evidence is taken in conjunction with a showing of the probable source of such deposits. *Gleckman v. United States*, 80 F. (2d) 394 (C. C. A. 8th), certiorari denied, 297 U. S. 709; *United States v. Werler*, 79 F. (2d) 526 (C. C. A. 2d), certiorari denied, 297 U. S. 703; *Malone v. United States*, 94 F. (2d) 281 (C. C. A. 7th), certiorari denied, 304 U. S. 562; *United States v. Miro*, 60 F. (2d) 58 (C. C. A. 2d); *Guzik v. United*

²⁶ Thus, as will be set forth in detail in Point III, *infra*, Johnson made many large personal expenditures of the type that would normally be made by check, but his expenditures were all in cash.

States, 54 F. (2d) 618 (C. C. A. 7th), certiorari denied, 285 U. S. 545; *Oliver v. United States*, 54 F. (2d) 48 (C. C. A. 7th), certiorari denied, 285 U. S. 543; *Orzechowski v. United States*, 37 F. (2d) 713 (C. C. A. 3d); *Emmich v. United States*, 298 Fed. 5 (C. C. A. 6th), certiorari denied, 266 U. S. 608.

Other evidence in the record strongly supports the conclusion that net income was represented by the check and currency exchange transactions. Losses to customers at the gambling houses were paid immediately upon the conclusion of the particular bet or if the gambling was by gambling checks at the conclusion of the customers' play. (2 R. 181-182, 299-300, 355, 465-466; 3 R. 572, 788, 792, 795, 826-827.) Horse-race betting was done in the afternoon and concluded early in the evening; other forms of betting began in the afternoon and carried on through the evening and early morning (2 R. 130, 187-188, 228, 249-250, 257, 304, 311, 389, 392, 405; 3 R. 550, 570, 810, 885). The respondents cashed checks and exchanged currency in the daytime during regular business and banking hours (2 R. 494, 495; 3 R. 554, 557, 560, 588, 595-597). The amounts involved in these transactions, therefore, represented the balance of the preceding day's business *after the payment of the house's gambling losses*. Moreover, the limitation on the size of individual bets at the houses and the known odds in favor of the house at the various forms of gambling (2 R. 349; 3 R. 802, 845, 846) made it

highly improbable that the house's gambling losses for any particular day would exceed its winnings.

Similarly, the record reveals that the most prominent single item of expense in the operation of the gambling houses, the employees' wages, was met daily prior to the close of business for the day (2 R. 237, 243, 255, 278, 322, 328, 336, 347, 348, 350, 352, 355, 359, 384, 387-388, 389, 391-392, 398, 462; 3 R. 787, 885-886). As with the losses, therefore, the checks cashed and currency exchanged on the following day were a net balance of receipts *after* the payment of wages. Cf. *United States v. Miro, supra*; *Orzechowski v. United States, supra*. The individual daily wage scale at all of the houses ranged from \$4 to \$15 (2 R. 130, 132, 222, 225, 227, 238, 250, 255, 297, 328, 334-335, 348, 350, 352, 386, 389, 462-463; 3 R. 787-788). Obviously the large denominations received on the cashing of checks would not subsequently have been used for payroll purposes.

Although the record does not directly indicate that other operative expenses were met in a manner whereby their payment necessarily preceded the segregation of the day's gambling receipts through the currency exchange transactions, the inference is plain that at least some payment of other expenses in this manner must have taken place (2 R. 267-269, 306, 308; 3 R. 732-733; cf. 3 R. 885-886). Irrespective of this, however, in proportion to the amounts of the receipts of the houses the expenses of operation, other than gambling losses and

wages, could only be small and could not affect the guilt or innocence of the respondents. See *United States v. Ragen*, 314 U. S. 513, 524-526. The record reveals the soundness of this inference.

The demonstrable or possible amounts of operating expenses at the houses must be compared with the established total income of the houses. For 1936 the total income was \$485,294.57, for 1937 \$852,890.56, for 1938 \$850,994.20 and for 1939 \$926,499.30 (*supra*, pp. 52-53). The largest potential expense, other than losses and wages, might be for "protection" payments. Sommers, Hartigan and Kelly, however, each denied that he had ever made such payments (2 R. 459, 466, 471). Furthermore, protection payments would not be deductible. *Maddas v. Commissioner*, 40 B. T. A. 572, affirmed on other grounds, 114 F. (2d) 548 (C. C. A. 3rd). The result follows *a fortiori* from *Textile Mills Corp v. Commissioner*, 314 U. S. 326, 337-339.

The second largest additional potential expense would be payments to the other respondents, which under the Government's theory of the case were salary or percentages of the profits paid the respondents in lieu of salary. These payments may be taken to be the amounts reported by the respondents Sommers, Hartigan, Fianagan and Kelly as gambling income. For 1936 these amounts totalled \$36,005, for 1937 \$48,167.38, for 1938 \$35,725 and for 1939 \$42,467 (*supra*, pp. 71-72).

Amounts spent for improvements at the houses (2 R. 142, 235-240; 3 R. 892) and gambling equipment such as gambling tables, roulette wheels, slot machines, etc. (see 3 R. 885) would be capital expenditures and not deductible. Expenses for currently used gambling supplies, hand book sheets, cashiers' sheets, dice and the like, even if deductible, would not be large. (Cf. Govt. Exs. O-212A to O-218S; Deft. Exs. S-12, S-13, S-14, S-15, S-16A, S-16B.)

The evidence for the Government does not directly disclose the rental paid for the gambling rooms other than the D & D Club. Kelly "rented" this space from Johnson in September 1936. His rental throughout his occupancy was \$450 per month. In 1937 Kelly was \$1,800 in arrears on the rent. Johnson waived the arrearages on Kelly's paying \$100. In December of 1939 Kelly was again in arrears in an amount of \$3.150. No action was taken by Johnson to collect this. (2 R. 14-18; see also 3 R. 878.) In his statement to the revenue agents Sommers stated that he paid rent of \$250 monthly for the Dev-Lin and \$200 for the Horseshoe gambling room (2 R. 469). The defense introduced testimony to the effect that Sommers paid \$200 monthly for the gambling room at the Horseshoe throughout the period 1936-1939 (3 R. 782-783) and \$250 monthly for the Dev-Lin from May 1, 1936 (3 R. 784; see also 3 R. 809). Similar testimony was

given that Hartigan paid \$200 monthly for the Harlem Stables from August 1936 until August 1939, and \$250 monthly during the balance of 1939 (3 R. 804-805). The defendant Wait testified that the rent at the Lincoln Tavern was around \$5,000 a year. (3 R. 906-907.) Flanagan testified that he paid \$50 a month for the clearing house at each of its locations (3 R. 932, 946) and that he paid Johnson \$250 monthly for the 4020 Ogden Club and \$250 for the 2141 South Pulaski²⁷ (3 R. 942). The maximum total rents paid for the houses, therefore, was \$18,800 in 1936, \$23,160 in 1937, \$24,000 in 1938, and \$20,900 in 1939.

A witness for the Government testified that Flanagan's account with the Nationwide News for horse racing service totalled about \$400 a week (2 R. 157). Flanagan stated that his payments varied from \$75 to \$260 weekly (3 R. 937). Taking the maximum amount, the annual expense for horse racing service was \$20,800. Bus service to the clubs cost approximately \$20,550 in 1936, \$20,213 in 1937 and \$420 in 1939 (2 R. 307-308). The check-cashing charge of the currency exchanges at the rate of twenty-five cents a hundred (2 R. 459, 468, 476) would have totalled \$638.54 in 1936, \$1,559.23 in 1937, \$1,475.48 in

²⁷ The rental paid to Johnson, if paid, was a further act of concealment of Johnson's ownership of the houses under the Government's charge and would not be deductible. However, since Johnson regularly reported rents from these properties they are included in this comparison of expenses.

1938, and \$2,216.25 in 1939 (*supra*, pp. 52-53). No charge was made for exchanging currency at the Albany Park Currency Exchange (2 R. 491).

With several minor exceptions mentioned in footnote 28, *infra*, the foregoing items appears to constitute all of the probable expenses in the operation of the houses. Many of them are probably not deductible from gross income in view of the illegal character of the enterprise, and it is possible that all of them were paid out of the till before the profits were taken out. But even if all were deductible, and even if they were paid subsequent to the segregation of the profits, a reasonable estimate shows that in the aggregate they were far less than the profits shown to have been derived in each of the years in question. Thus, the yearly totals of these expenses, excluding gambling losses and wages which were shown to have been taken out before the profits were segregated,²⁸ were as follows: \$96,793.54 for 1936, \$113,839.61 for 1937, \$82,800.48 for 1938, and \$86,803.25 for 1939. But the profits shown to have been received during each of the years (*supra*,

²⁸ Also excluded from these totals are the moving and storage expenses (Govt. Exs. 0-128-0-182, 0-191-0-201; 2 R. 265-270, 272-273); utility bills for gas, light, etc. (cf. Deft. Exs. S-17A, S-17B, S-24, S-25, S-26, S-27); and telephone charges (cf. Deft. Exs. S-21, S-22, S-23). The record does not show the amounts of these charges, but the jury could reasonably conclude that they were within normal limits, and that even when added to the expenses summarized above, the amount of net income remaining would be vastly in excess of all the expenses.

pp. 52-53, 66), ranged from about four to ten times these amounts. And even after subtracting these amounts plus estimated amounts for the items mentioned in footnote 28, the remaining net income would be well over \$300,000 for 1936, and would conservatively run from \$650,000 to \$750,000 a year for the other three years.

III

THE RECORD FURNISHES PROOF THAT DURING AT LEAST EACH OF THE YEARS 1937, 1938, and 1939 JOHNSON'S EXPENDITURES EXCEEDED REPORTED INCOME AND WERE MADE IN PART FROM HIS UNREPORTED INCOME RECEIVED IN EACH OF THOSE YEARS

The Court's third and fourth questions are whether Johnson's sentence on the first four counts, if it is to be sustained on the "expenditure theory," must be supported by proof that during some one of the four years involved his expenditures exceeded reported income and were made in part from his unreported income received in that particular year; and, if so, whether the record furnishes such proof. Both questions may be answered in the affirmative. We shall here undertake to show that during each of at least the last three of the four years involved, Johnson's cash expenditures exceeded reported income and were made in part from unreported income received in each of those three years, respectively.

The indictment charged Johnson with attempt to defeat and evade his income taxes, and the principal question was whether he actually received more taxable income than he reported. We have attempted to show in Points I and II, *supra*, that Johnson owned a number of gambling houses; that the income therefrom may reasonably be attributed to him; and that such income was in excess of his reported income. But there is no single exclusive method of proving the receipt of unreported income. Any circumstances from which the jury could reasonably be convinced that the defendant has received unreported income are sufficient. And the fact that a taxpayer has made large cash expenditures during any year in question which exceed all his known cash resources plus his reported income may give rise to the inference that he has in fact received more income than he has reported—i. e., that the expenditures were made in part from unreported income. This is in essence the “expenditure theory,” and it has been approved as a method of proof of tax evasion. *United States v. Skidmore*, 123 F. (2d) 604 (C. C. A. 7th), certiorari denied, 315 U. S. 800. Whether the inference is strong or weak depends entirely upon the facts of the particular case. The inference is especially strong here, since the expenditures were far in excess of all of his known cash resources plus reported income during each of the last three years, and the jury was therefore fully

warranted in concluding that those expenditures were made in part from unreported income received during each of those three years, respectively. Moreover, the fact that Johnson was shown to have had an interest in the gambling houses reinforced the conclusion that the excess constituted unreported income, for it explained the source of those large expenditures.

In summary as to this aspect of the case, the Government proved from Johnson's own admissions that his cash resources at the beginning of 1932 were \$78,000; to that amount it added his receipts for the years 1932-1936, inclusive, and subtracted his expenditures during those years. His cash balance at the beginning of 1937 was thus shown to be \$202,919.89. His expenditures for 1937, however, were \$555,236.55, or more than \$82,000 in excess of his reported income for 1937 plus his cash balance on hand at the beginning of the year. Similarly, for 1938, his proven expenditures exceeded his reported income by \$357,079.98; and for 1939, his proven expenditures exceeded his reported income by \$150,580.05. The mathematical computations, with appropriate record references, are set out in full on the chart inserted at the end of this brief. Thus, since the record shows that Johnson had an interest in the gambling houses entitling him to income therefrom, and since the houses were shown to have been en-

gaged in operations of considerable magnitude which were productive of large profits, there was a strong inference that the expenditures made by Johnson in the years 1937, 1938, and 1939 were made in part from unreported income received by him during each of those years by reason of his interest in the gambling houses. Cf. *Gleckman v. United States*, 80 F. (2d) 394 (C. C. A. 8th), certiorari denied, 297 U. S. 709.

Johnson admitted to revenue agents that his income was from gambling (2 R. 410-411), and all of the expenditures charged to Johnson were made in cash (see e. g., 2 R. 55-62; 3 R. 979); no exchanges of property for other property or services are involved. The principal initial problem, therefore, is as to Johnson's available cash balances during the years 1937, 1938, and 1939. Any non-cash assets, such as real estate which Johnson may have owned during the period in question are not material, unless there is reason to believe that they were converted into cash and thus became available as an additional source of Johnson's expenditures. Johnson himself described the status of all of the non-cash assets known or claimed to have been owned by him (3 R. 949-950, 955-961, 970-971, 972-973, 976-979, 981-983, 990), and he also testified that he used his bank account only for the payment of taxes (3 R. 978).

If there were any likelihood that Johnson had converted any of his other assets into cash as a

possible source for his expenditures, it would have been revealed in the record. For, the sale of such assets would undoubtedly have resulted in some gain or loss which would have been reflected as capital gain or loss on his income tax returns. The returns were before the jury, and it was entitled to infer that no such sales had occurred; a sale at precisely cost is not common, and the probability that sales of a number of assets were all at cost is exceedingly small. Similarly, if he had owned any substantial blocks of securities, that fact would undoubtedly have been reflected in his returns by the reporting of dividends, interest, etc. Again, the ownership and sale of real estate would be indicated by deductions for real estate taxes, etc., and by the termination of such deductions. From 1932 through 1939 Johnson reported no capital gains or losses and no dividends, and his returns show no diminution in claimed deductions for depreciation and real estate taxes, except as to 1939, in which year Johnson gave an apartment building to his brother (3 R. 977; Govt. Exs. R-6—R-13). Johnson's statement to revenue agents in 1939 and his testimony as to his assets on December 31, 1939, indicate that he invested primarily in real property and to a small extent in mortgages and bonds (2 R. 411-412, 417; 3 R. 976-978).

The existence of loans outstanding to Johnson in 1932 would be revealed by interest reported on

the returns. Large noninterest bearing loans would be unusual transactions. Johnson reported interest in 1932 of \$1,380. The repayment of the principal of an amount of loans indicated by this amount of interest would not materially affect the outcome of the Government's computation. The making and repayment of loans between 1932 and 1939 would be indicated by a rise and fall in interest reported during the period. The amount of interest, however, reported by Johnson during this period remained relatively constant (Govt. Exs. R-6—R-13). In testifying at the trial Johnson claimed the receipt of payments on loans outstanding in 1932 (3 R. 959-960). Effect has been given to this claim in the attached computation.

Although Johnson might conceivably have received large gifts in cash, he never at any time so contended, and the very magnitude of the amounts involved would justify the jury in concluding that they were not reasonably to be explained as gifts. In these circumstances the Government has met its burden of proof by showing a definite source of income and the making of cash expenditures in excess of reported income plus known cash resources. Decisions in analogous cases indicate that the Government is not compelled to go further and establish specifically that no gifts had been received. Cf. *Rossi v. United States*, 289 U. S. 89; *Crapo v. United States*, 100 F. (2d) 996 (C. C. A. 10th); *Saurain*

v. *United States*, 31 F. (2d) 732 (C. C. A. 8th); *Edwards v. United States*, 312 U. S. 473, 482-483; *McKelvey v. United States*, 260 U. S. 353; *United States v. Cook*, 17 Wall. 168; 2 Chamberlayne, *Modern Law of Evidence* (1911), Secs. 978-984; IX Wigmore on *Evidence* (3d ed., 1940), Secs. 2486 (especially fn. 3) and 2512 (d). Information as to the existence of unknown or secret gifts is peculiarly within the knowledge and control of the defendant and may easily be presented by him. To prevail on this ground the defendant should be required at least to put in issue the receipt of specific gifts and thereby permit the Government to assume its full burden of proof of establishing the defendant's guilt in the face of the defendant's specific claim. These respondents have at no time contended that Johnson received cash gifts or bequests during the period of time in question.²⁹

The complete computation of the Government including the individual items of income, cash receipts, and expenditures with supporting record citations, as set forth in the attached chart, discloses that Johnson made cash expenditures of more than \$600,000 in excess of his available cash

²⁹ These considerations are equally applicable to the problem of the Government's negating the existence of cash received by Johnson from undisclosed sales of assets or repayments of loans. Johnson made no claim of his receipt of cash other than as income except as to the repayment of the principal of certain mortgages and a Joint Stock Land Bank bond (3 R. 959-960).

resources plus reported income for the three years 1937-1939, inclusive. A number of the items involved in this computation were not contested at the trial (cf. 3 R. 991-995 with 4 R. 18-26, 35-36, 41-45, 46-52), and most of the amounts involved in the disputed items were not in issue. (See 3 R. 992-993.) Johnson, however, did contest the use of the \$78,000 figure as his cash balance as of the beginning of 1932, and he contended also that certain expenditures, principally for real estate or improvements on real estate, were not chargeable to him because he had no interest or only a partial interest in the property involved. A summary of the evidence on the disputed items follows:

Johnson's cash balance, December 31, 1931.—The initial premise of the Government's contention as to Johnson's expenditures is that Johnson's cash balance on December 31, 1931, was \$78,000. The Government's position is based upon admissions of Johnson himself to Revenue Agent Wilson on January 26, 1940. The revenue agent testified as follows (2 R. 10):

I asked him [Johnson] how much he had on December 31, 1931. He said he had his bank roll of \$10,000.00 and \$68,000.00 in accumulated gambling profits in the safety deposit box. He said that all the money in the box was gambling profits. He kept all his gambling profits in his box; not in his bank, he told me. He said it was in the form of currency. We discussed several adjustments made on examination

of his income tax return for 1931, particularly in relation to currency, and he told me at that time what he had on December 31, 1931.

Defense counsel simply moved to strike this testimony, *but did not cross-examine the witness* (2 R. 11). Johnson testified that he recalled the conversation with Revenue Agent Wilson but that the conversation related to an item of \$78,000 on his 1931 return, that he told Wilson it was from gambling, that Wilson asked him what he did with the money and he said he kept \$10,000 in his pocket and the rest in the box, that he did not tell Wilson that the \$68,000 was the only cash he had in the box at that time and that he had between \$140,000 and \$150,000 in the box besides the other (3 R. 960). There was thus raised a sharp issue of credibility which the jury could resolve for itself.

Lincoln Park Building.—Prior to 1932 Johnson had been one of several joint owners of the equity in the Lincoln Park Building, the business building which housed the D & D Club. Another joint owner, who also later acted as the agent for the building, testified that in the latter part of 1933 Johnson purchased the other interests in the equity in the building for \$16,000 and that Johnson made the payment to him. The witness likewise testified that Johnson had acquired some of the second mortgage notes in 1932 and 1933 and that he purchased the balance of the second mortgage notes in 1933 for \$32,000, paying this sum to the witness.

(2 R. 12-13, 15.) Johnson testified that he paid only \$7,500 for the interests of the other equity owners and \$22,000 for the outstanding mortgage notes he did not then own (3 R. 956-957).

Albany Park Bank Building.—Goldstein, an attorney, testified that he purchased this building on July 16, 1937, at the request of Johnson, that he received the amounts of the original deposit and final payment in currency from Johnson, that title to the property was taken in the name of his son, and that a quitclaim deed subsequently was delivered to Johnson by his son (2 R. 56-57). The Lawrence Avenue Currency Exchange, operated by the respondent Brown, was located in this building after July 1938 (3 R. 587). Goldstein's testimony was corroborated by the testimony of two employees at the building who stated that Goldstein reemployed them and became the spokesman for the building in July 1937 (3 R. 587, 590, 595, 599).

Johnson testified that he did not own any part of the Albany Park building, that he never employed Goldstein to purchase the property or gave him money to make the purchase and that no deed was delivered by Goldstein to him (3 R. 955). Johnson's testimony, however, must be weighed in the light of the fact that in the opening statement his attorney said that Johnson owned the building and accurately described its operation (2 R. 3-4).

9730 South Western Avenue.—Goldstein testified that he purchased the real estate comprising this property, a number of vacant lots, in 1937, that he purchased the various lots at Johnson's request and received the amounts of the payments from Johnson in currency, that title to the parcels was variously taken in the names of his law partner or his secretary and that subsequently quit-claim deeds were delivered to Johnson (2 R. 55-56). On cross-examination Goldstein stated that a deed for one-half of the property was made to William R. Skidmore, but he denied that Skidmore had given him the money to make the purchase (2 R. 63-66).

A building was constructed on the property in 1937. The supervising architect, Nadherny, who was called as the court's witness, testified that he was working for Skidmore when Skidmore told him he had a friend [Johnson] who wanted to put up a building. Johnson explained to the architect the type of building desired and ordered the preparation of plans. Nadherny stated that he received the money which he paid out for the construction of the building in part from Skidmore and in part from Johnson but said that he felt the payments were being made by Skidmore in Johnson's behalf, "like an agency". (2 R. 74, 75, 79, 83-84, 85, 88-89.)

Two revenue agents related a conversation which they had with Johnson in November of 1939. Both

stated that Johnson told them he was the owner of 9730 South Western Avenue. (2 R. 117-118; 4 R. 8.) One testified that Johnson said nothing as to whether Skidmore had an interest in the property although he had asked him (2 R. 118). In a formal statement given by Johnson on March 27, 1939, and introduced in evidence, Johnson stated that he had had no business transactions with Skidmore, except a loan he had made to Skidmore (2 R. 411).

Johnson testified that he owned one-half of the property at 9730 South Western Avenue and that he had contributed to the purchase of the land and building of the improvement. He denied that he ever told the agents he was the sole owner and stated he told them he was the part owner (3 R. 955, 959). On cross examination Johnson stated that he bought the property at Skidmore's suggestion and paid one-half of the purchase price to Skidmore and that the two of them decided to build the building and he paid one-half of the cost (3 R. 973-975).

Bon-Air Country Club and adjacent properties.—In its final form this property included an original country club and a number of adjoining properties (3 R. 956). Goldstem testified that he made the purchase of these various properties at Johnson's request, that he received the money for the purchase payments from Johnson in currency, that he took title to the properties

in the names of nominees and that quit-claim deeds were subsequently delivered to Johnson (2 R. 57-59). Johnson admitted that the record title to Bon-Air was in his name (3 R. 963-964). An officer of the bank which sold the country club property testified that he negotiated the sale with Goldstein and received payment from him. The witness said that he met no principal other than Goldstein and that he had no contact or dealings with any other person than Goldstein (3 R. 574-575).

The country club property was operated as a night club during 1938 and 1939 by a corporation known as the Bon-Air Catering Company, Inc. (2 R. 48; 3 R. 897, 956). Fifty-four shares of the corporation's capital stock were registered in the name of and held by Johnson, twenty-four shares by the defendant Wait, twenty shares by the respondent Hartigan, and one share each by two employees¹⁰ (2 R. 55; 3 R. 775, 912, 964). An accountant employed by the accounting firm which prepared and audited the corporation books testified that in the fall of 1939 he asked Johnson for details as to the payment of the various amounts of stock and that Johnson instructed him to charge all of the amount to his (Johnson's) account. This entry was made by the

¹⁰ Some time after the formation of the company one of the employees died, and his share was transferred to Johnson, thereby increasing Johnson's holdings to fifty-five shares (3 R. 912, 956, 964).

accountant in the corporation's books. (3 R. 775-776.)

Large expenditures for improvements on the Bon-Air property during 1938 and some in 1939 were entered as assets on the Catering Company's books. These amounts were variously credited to Johnson, Wait, one Geary and Roy Love. An accountant for the auditing company stated that he discussed these charges with Johnson in 1939 and that Johnson told him that all of these items had been advanced by him and should be credited to him rather than scattered among the four accounts. The accountant was likewise instructed by Johnson that these should never have been on the corporation's books and should be taken off. Accordingly, he took the asset accounts off the corporation books and merged the small credit remaining in Johnson's account. (2 R. 53-54.)

Reference has already been made to Johnson's conversation with revenue agents in November 1939 (*supra*, pp. 101-102). At that time Johnson told the agents that he owned the Bon-Air Country Club and no mention was made that Skidmore had any interest in the property (2 R. 117-118; 4 R. 8). It will also be recalled that in Johnson's statement of March 1939, he said that he had had no business transactions with Skidmore (2 R. 411).

Johnson testified that he owned one-half of the Bon-Air properties and that Skidmore owned the

other half. He denied that he had anything to do with the negotiations for the purchase of the property and that he ever gave Goldstein money to pay for the property. He stated that Skidmore purchased the property, that he, Johnson, later contributed his one-half of the price and that each of them thereafter contributed equally to the expenditures for improvements and operations. (3 R. 955-957, 961-965, 967-970, 979, 982, 983-984.) Johnson denied that he had told the revenue agents he was the sole owner of Bon-Air and said that he told them he was part owner (3 R. 959, 963). He explained his statement about never having business transactions with Skidmore by saying that the conversation related to gambling and that he thought the question asked related to gambling transactions (3 R. 963).

The defendant Wait gave similar testimony as to the ownership of Bon-Air (3 R. 896-898, 900, 910-913). The defense likewise introduced other evidence for the purpose of proving an interest of Skidmore in Bon-Air. This consisted of testimony as to Skidmore's doing acts in relation to the improvement and operation of the club, such as the payment of money, of Skidmore's frequently being at the club, of the accounts of two companies relating to Bon-Air being in Skidmore's name or the name of his junk business, of Skidmore's coat of arms being hung in the club, and of circumstantial evidence to connect Skid-

more with the construction and operation of the property. (3 R. 893-895, 916, 916-917, 919-920, 922-923, 923, 923-924, 925-926, 928, 928-930.) One witness, not a real-estate dealer, likewise testified that he carried on preliminary negotiations with the selling bank for Skidmore for the purchase of Bon-Air (3 R. 914-916). It will be recalled that the bank officer stated he dealt only with Goldstein (3 R. 575).

The amounts of the expenditures for improvements at Bon-Air in 1938 were shown by the books of the Catering Company (Govt. Exs. E-46-E-53). Expenditures for 1939 were not entered in the corporation books but on separate accounts as to the underlying ownership of the land. Johnson stated that he was unable to produce these records (3 R. 964-965). Accordingly, the Government introduced at length testimony of suppliers as to work or supplies furnished Bon-Air in 1939.³¹ (2 R. 89-91, 92-93, 119-128, 140-141, 142, 143, 144, 145-148, 168-169, 170-173, 228-229, 229-230, 230-232, 232-233, 258-259, 259-260, 260-261, 261, 274-276, 308, 312-315, 392-395). In testifying, however, Johnson stated that he advanced only half of the money expended on improvements and opera-

³¹ The total expenditures made by Johnson in 1939 for improvements on Bon-Air, as shown by this evidence, were \$228,195.07 (4 R. 49). The Government's proof, therefore, established as Johnson's total expenditures for Bon-Air prior to 1940 the sum of \$660,992.73 (4 R. 49).

tion of Bon-Air and that his net advances (including a credit of about \$11,000) up to the end of 1939 totalled \$365,000 (3 R. 957, 992). Accordingly, the Government, upon the assumption that Johnson was the full owner rather than half owner, has used the amount of \$730,000 minus a certain credit of \$22,355 (3 R. 992) as the total of expenditures on Bon-Air and has applied to 1939 the balance of this total not reflected in the Catering Company's books for 1938.

The Dells.—As with the other properties Goldstein testified that he purchased the two parcels comprising this property at the request of Johnson, that he received the purchase money from Johnson in currency and that he delivered quitclaim deeds to the property to Johnson (2 R. 59, 66-67).

Johnson testified that he owned only a one-half interest in the Dells property and that he paid Skidmore for that one-half interest. He denied that he had made any arrangements with Goldstein for its purchase (3 R. 955, 970-971). An attorney, testifying for the defense, stated that he represented the sellers of the Dells and carried on negotiations with Goldstein for the sale. He said that he talked to Skidmore about the purchase, and obtained Skidmore's approval as to the price. He further said that he never saw Johnson in connection with the transaction. He admitted that

Goldstein paid him the purchase money at later dates. (3 R. 926-927.)

Columbian Gardens real estate.—Goldstein testified that at the request of Johnson he entered into an escrow agreement as to one of these properties and deposited \$10,000. He likewise made a deposit of \$7,500 on adjoining property at Johnson's request. He stated that he received the currency from Johnson. (2 R. 60-61; see also 3 R. 575-576; Govt. Ex. E-39.)

Johnson stated that he did not furnish Goldstein with the money for these deposits and knew nothing of the transactions (3 R. 957).

Miscellaneous items.—Johnson's statement of March 1939 in the course of an examination of his 1937 income tax return disclosed that he had loaned Skidmore \$37,000 (2 R. 411). This loan has been included as an expenditure of Johnson's in 1937. At the trial Johnson testified that the loan was made in 1939 and repaid in the same year (3 R. 957, 984).

An accountant, who testified as an expert witness for the defense, stated that his examination of capital expenditures at Johnson's farm resulted in a total amount of \$4,310.75 less than the Government accountant's total through some unlocated difference. Accordingly, the defense computation is reduced by this amount (3 R. 993).

Johnson admitted making expenditures for the purchase of Liberty Bonds and payments of the mortgages on 4020 Ogden Avenue and 2141 Pulaski Road (3 R. 972-973, 976-977). The expert accountant for the defense identified these as to year and amount and from an examination of all the record added amounts of interest and additional expenditures on Johnson's farm (3 R. 992-993). Johnson likewise claimed the receipt of payments of principal on two mortgages and a Joint Stock Land Bank bond (3 R. 959-960, 970, 993). All of these items, including Johnson's uncorroborated claim of the receipt of additional cash, have been reflected in the Government computation.

Johnson testified that his living expenses were around \$10,000 a year (3 R. 978). This amount has been used in the attached computation. Johnson likewise testified that he had about \$50,000 in cash on December 31, 1939 (3 R. 976).

The conflict of evidence as to the disputed items thus reduces in the main to a question of the truthfulness of conflicting testimony and in part to the meaning of conflicting testimony and the weight of opposing evidence. The major part of the defense to the Government's expenditure theory rests on the testimony of Johnson himself. Clearly, therefore, Johnson was not entitled to a directed verdict in these circumstances.

CONCLUSION

The judgments of the Circuit Court of Appeals should be reversed and the judgments of the District Court affirmed.

Respectfully submitted.

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SEPTEMBER 1942.



WILLIAM R. JOHNSON

Statement of receipts and expenditures

Record Citations	1932		1933		1934		1935		1936	
	Cash receipts	Expenditures	Cash receipts	Expenditures	Cash receipts	Expenditures	Cash receipts	Expenditures	Cash receipts	Expenditures
Balance Forward	\$878,000.00		\$127,410.17		\$134,215.93		\$175,547.93		\$116,837.78	
<i>Items of Cash receipts</i>										
Per Income Tax Returns (Govt. Exs. R 6—R 13)	70,677.54		74,667.81		116,214.53		57,878.88		161,892.74	
Additional (4 R 47)	415.56		2,097.13		16,129.36		605.39		1,132.70	
Depreciation Allowed (Govt. Exs. R 6—R 13)	2,067.41		3,067.41		9,007.35		9,942.68		10,410.77	
Investments Recovered (3 R. 959-960, 970, 993, Govt. Ex. R 6)	289.45		2,083.51		4,715.91		5,076.18		7,466.37	
<i>Items of Expenditure</i>										
Income Taxes Paid (Govt. Exs. R 90—R 104)		88,841.11		88,610.10		827,993.00		841,373.56		820,062.18
Payment of Mortgage—2141 So. Crawford Ave. (3 R. 972, 992)				5,000.00						
—4020 Ogden Ave. (3 R. 972, 992)		500.00		8,500.00						
Purchase of Liberty Bonds (3 R. 976-977, 993)				5,000.00						
Lincoln Park Bldg.:										
Purchase of Equity (2 R. 12)						16,000.00				
Payment of 2nd Mtge. (2 R. 13, 15; Govt. Ex. E-9)										
Payment of 1st Mtge. (2 R. 36; Govt. Ex. E-12)		4,750.00		38,000.00						
Delinquent Taxes (2 R. 430)						25,000.00		75,000.00		50,000.00
Improvements (Govt. Exs. R-8—R-13, E-16—E-20)						15,205.48				
Furnishings (Govt. Exs. R-8—R-13, E-16—E-20)						6,030.05		2,059.91		4,398.72
Thorndale-Glenwood—Furnishings (Govt. Exs. R-8—R-13, E-21—E-25)						3,076.40		3,453.81		235.57
Albany Park Bank Bldg.—Purchase of (2 R. 3-4, 57)						730.22		326.00		124.00
9730 So. Western Ave.:										
Purchase of land (2 R. 55-56, 118; 4 R. 8; Govt. Exs. E-27—E-30)										
Buildings (2 R. 75, 79, 83-84, 88-89, 117-118; 4 R. 8)										
Sunny Acres Farm:										
Purchase of (2 R. 60; 3 R. 982; Govt. Ex. E-31)										
Capital Items and Expenditures (3 R. 993, 4 R. 5-6, 10)										
Personal (3 R. 993; 4 R. 5-6, 10)										
Bon Air Catering Co.:										
Purchase of Property (2 R. 57-58; Govt. Exs. E-32—E-34)										
Improvements (2 R. 51, 54, 118; 3 R. 957, 983, 992; Govt. Exs. E-46—E-53)										
Curran Farm—Purchase of (2 R. 58-59; Govt. Exs. E-37, E-38)										
Columbian Gardens Real Estate—Deposit of Currency (2 R. 63-61; 3 R. 575-576; Govt. Ex. E-29)										
De Page County Real Estate—Purchase of (2 R. 60, 3 R. 594, 982; Govt. Ex. E-41)										
The Dells—Purchase of (2 R. 59, 66-67; 3 R. 955, 992-993; Govt. Exs. E-35, E-36)										
Loan to Wm. R. Skidmore (2 R. 411)										10,000.00
Interest Paid (3 R. 993)		117.56								
Living Expenses (3 R. 978)		10,000.00		10,000.00		10,000.00		10,000.00		10,000.00
Balance on Hand (3 R. 976) 12-31-1939										
Balance Forward		24,208.67		75,110.10		104,035.15		122,212.26		94,830.47
		127,410.17		134,215.93		175,547.93		116,837.78		302,919.89
Totals	151,618.84	151,618.84	209,326.03	209,326.03	279,583.08	279,583.08	249,051.06	249,051.06	307,740.26	307,740.26

* Stated Cash on hand Jan. 1, 1932 (2 R. 10).

* Stated Cash on hand Dec. 31, 1939 (3 R. 976).

Statement of receipts and expenditures

on hand Dec. 31, 1939 (3 R. 976).

¹ Red figures represent excess of expenditures over cash receipts and other cash.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No. ~~799~~ 4

THE UNITED STATES OF AMERICA,

Petitioner,

vs.

WILLIAM R. JOHNSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

**BRIEF FOR RESPONDENT WILLIAM R. JOHNSON
IN OPPOSITION.**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No. 799.

THE UNITED STATES OF AMERICA,
Petitioner,
vs.

WILLIAM R. JOHNSON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

**BRIEF FOR RESPONDENT WILLIAM R. JOHNSON
IN OPPOSITION.**

Opinion Below.

The opinion of the Circuit Court of Appeals (Tr. 180-201)* is reported at 123 F. (2d) 111.

Question Presented.

The question presented by this case is whether the Circuit Court of Appeals correctly construed the order of February 28, 1940, of the District Judge which purported to

* The record is in four volumes. References to the small volume, which is the transcript of the District Court Clerk's record and of the record of the Circuit Court of Appeals and the pages of which are numbered from 1 to 232, are indicated by the abbreviation "Tr." References to the two large volumes, which are the bill of exceptions and the pages of which are numbered from 1 to 1066, are indicated by the abbreviation "R." References to the small volume which is Clifford's testimony by question and answer are made,—“Vol. IV.”

authorize a Grand Jury to continue to sit during a third term of court.

Statement of the Case.

In December 1939 the second December 1939 Grand Jury of the Eastern Division of the Northern District of Illinois was impaneled. By order dated January 24, 1940, during the December term, this Grand Jury was authorized to sit during the February 1940 term of the court to finish investigations begun but not finished during the December term. During the February term, the Grand Jury requested the District Judge to continue it into the March 1940 term of the court to finish investigations begun but not finished by the Grand Jury during the December 1939 and the February 1940 terms of the court. Upon such request the District Judge entered the following order:

“Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, the said Second December, 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished during the said February 1940 Term of Court; and the Court being fully advised in the premises,

“It Is Therefore Ordered That the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations.” (Tr. 28-29.)

It will be seen from the above that the Grand Jury requested the District Judge to authorize it to continue to sit in the March 1940 term not only to continue investigations

begun in the December 1939 term, but also to continue investigations begun in the February 1940 term of the court, and that the District Judge granted this request. In this respect the order of the District Judge was void because it violated the explicit provisions of Section 421, Title 28, U. S. C., Supp. which permits a continuation of a grand jury from one term of court into the succeeding term of court *solely* for the purpose of continuing investigations commenced but not finished in the term of the court in which the grand jury was originally impaneled. In this case the Grand Jury was originally impaneled in the December 1939 term of court and concededly could have been continued into the February 1940 term of court and then into the March term of the court solely to continue investigations begun in the December 1939 term of court, but not finished in the December and the February terms. What the Grand Jury requested and what the District Judge authorized was the continuation of investigations *begun* by the Grand Jury in the February 1940 term of court, as well as those begun in the December 1939 term. The order of the Judge being void, the Grand Jury legally impaneled in the December 1939 term and legally continued to the February 1940 term ceased to exist as a legal entity at the expiration of the February 1940 term and therefore had no legal existence on March 29, 1940, when it returned the indictment herein.

On March 29, 1940, the Grand Jury returned an indictment in five counts against Respondent and others (Tr. 2). The first four counts charged the Respondent Johnson with wilful attempts to defeat and evade a large part of his income taxes for the calendar years 1936 to 1939, inclusive, and charged the co-defendants with wilfully aiding and abetting Johnson's unlawful attempts at evasion. The fifth count charged all the defendants jointly with conspiracy to defraud the United States of Johnson's taxes for the years in controversy (Tr. 2-25).

Johnson filed a motion to quash the indictment, in which

it was charged in substance that the indictment had not been returned by a legal grand jury because the District Judge's order of February 28 purporting to continue the grand jury into the March term was void (Tr. 28-31). The District Court overruled the motion to quash (Tr. 45). Defendant Johnson also filed a demurrer to the indictment (Tr. 37-38), which was overruled (Tr. 45).

At the trial, the Government sought to sustain the allegations that Respondent Johnson failed to report all of his taxable income for the years 1936 through 1939 on two distinct theories:

(a) By undertaking to prove that Johnson was the sole owner of a group of gambling houses operated in and about Chicago and that all of the proceeds of checks cashed and currency exchanged by persons operating these gambling houses were income from these gambling houses, and therefore that the aggregate of these banking transactions was taxable income of this Respondent which was in excess of the amount of net income which he reported; and

(b) By offering proof that Johnson expended in said years more cash than he had available for spending according to the income reported.

Respondent Johnson denied that he owned any of said gambling houses and denied that he had any interest in the banking transactions, and offered evidence showing that the gambling houses were owned respectively by certain of those named in the indictment as accessories and conspirators, and that they only were interested in their respective banking transactions. He also offered evidence showing that expenditures made by him were within the amount of cash which he had available for spending according to his income tax returns.

Respondent Johnson filed income tax returns regularly from 1921 to the present time (R. 960). His returns for the years 1932 to 1939 inclusive were received in evidence

(R. 8-9). His income from gambling was generally reported on these returns as "Miscellaneous Speculative Income" (R. 437) or some similar description, and his business was often stated as "Speculator" (R. 103), or "Miscellaneous Investments and Speculations" (R. 438). These descriptions were suggested by public accountants employed by him to prepare his returns (R. 103, 437). Johnson reported for 1936 a net cash income of \$173,220.40 (Gov. Ex. R-10); for 1937, \$264,015.13 (Gov. Ex. 2-11); for 1938, \$120,975.15 (Gov. Ex. R-12); and for 1939, \$268,885.98 (Gov. Ex. R-13), and paid the tax due thereon.

In making the computation of Johnson's income for the several years the Government accountant included the aggregate amount of all financial transactions of all of the alleged accessories and conspirators at various banks and currency exchanges. It was assumed, without proof, that all money involved in these transactions represented net profits of gambling houses operated by some of Johnson's co-defendants. None of the proceeds of these transactions was deposited and there was no proof of the amount involved. The accountant's computations for each of the years were made on the assumption, without proof, that Johnson was the *sole* owner of all the gambling houses named by the Government witnesses and that all checks cashed and all currency exchanged by Sommers, Creighton, Flanagan, Kelly and Hartigan represented taxable income of Defendant Johnson. (R. 750-754). The Circuit Court of Appeals characterized this as "rank speculation" (Tr. 195).

All the direct evidence was to the effect that this defendant did not own, had no interest in and received no income from any of the gambling houses named in the indictment or in the bill of particulars or in the evidence, except such interest as he had in the Bon-Air gambling room through his ownership of stock in the Bon-Air Catering Company (R. 819, 861, 878, 896, 949). Supporting the testimony of

the co-defendants as to their ownership respectively of the gambling houses enumerated was the testimony of disinterested witnesses and exhibits offered by defendants (R. 782, 784, 785, 804, 805, 850, 851, 854, 856, 891). There was no direct evidence that Johnson owned or was interested in or received any income from any of these gambling houses. The circumstantial evidence offered by the prosecution to show that Johnson was the owner consisted of testimony that Johnson frequently visited some of the places, that he talked with the persons who were in charge, that the same accountants served Johnson and his co-defendants in the preparation of income tax returns, that large quantities of \$100 bills were taken by the operators of the several gambling houses in cashing checks and exchanging currency, and that Johnson was in possession of \$100 bills and used them with bills of other denominations in paying the purchase price of and for new construction on properties owned by him or in which he was interested, and other similar remote circumstances.

The Government also relied on circumstantial evidence to show the *amount* of Johnson's taxable income by the indirect method of proving cash expenditures made. For instance, the Government proved by the uncorroborated testimony of William Goldstein, a disreputable lawyer shown by admissions on cross-examination and by the testimony of credible witnesses and by documentary evidence to have committed perjury on the trial, that Johnson purchased Bon-Air Country Club in 1938 and paid the purchase price thereof (R. 57). Johnson testified that he owned only half of the property and that William R. Skidmore owned the other half (R. 956). Becker, a witness for the Government, testified that the purchase price was paid by Goldstein and that Goldstein stated that he was representing "clients" (note the plural) (R. 574). Many other witnesses testified to facts showing that Skidmore was interested in the Bon-Air Country Club (R. 893, 914, 915,

919, 922, 923, 925, 928, 954). There was no direct evidence by the Government that Johnson made *all* expenditures for the improvement of this property, but the Government accountant charged to Johnson every dollar that was spent on the property (R. 764). The only direct evidence on the subject is that Johnson made *half* of these expenditures and that the other half was made by Skidmore (R. 897, 956). The Government accountant admits that Johnson had available for expenditure in the years 1936 and 1937 more cash than he expended (R. 759). The Government arrives at its result of excess of expenditures over available cash in 1938 and in 1939 by assuming that all the money spent on the Bon-Air Country Club and on other properties in which he had some interest was spent by Johnson, but this assumption is the result of inference based upon inference.

There was a total failure of proof of the *amount* of Johnson's income for any year, except as shown by the returns filed by Johnson.

SUMMARY OF ARGUMENT.

I. The only question presented by the decision of the Circuit Court of Appeals is the validity of the February 28, 1940, order of the District Judge purporting to authorize the second December 1939 Grand Jury to continue to sit during the March 1940 term of the District Court. The Government is in error in asserting that the judgment of the court below is based upon a "variety of grounds." No ground other than the invalidity of the order of February 28, 1940, would support the judgment. The other questions discussed in the opinion of the court are not properly before this Court in this case.

II. The February 28, 1940, order of the District Judge being invalid, the December Grand Jury was not legally empowered to sit during the March term of the Court. Since the indictment against Respondent Johnson was returned on March 29, 1940, which was after the expiration of the February Term of Court, it was not returned by a legally constituted grand jury. The conviction based upon this void indictment was properly reversed.

III. The question of the validity of the February 28, 1940, order of the District Judge is not a proper basis for the granting of a writ of certiorari under the rules for issuance of such writ, there being involved no important constitutional question, question of statutory interpretation, or question of administration of any law.

IV. The judgment of the Circuit Court of Appeals does not result in a miscarriage of justice which calls for the exercise of this Court's supervisory powers. The record, far from showing Respondent guilty, shows that the prosecution of Respondent Johnson was a perversion of justice. The decision rests upon substantial and not upon technical grounds.

ARGUMENT.

I.

The Only Question Presented Is the Validity of the February 28, 1940, Order of the District Judge.

The only question presented for consideration of this Court by the decision of the Circuit Court of Appeals is whether the order of the District Judge of February 28, 1940, purporting to authorize the second December 1939 Grand Jury to continue to sit during the March 1940 term of the District Court was a valid order. The Court below rested its judgment solely upon the holding that the said order of February 28, 1940, was void.

The Petition states (pp. 2, 4) that the decision rests upon "a variety of grounds." It further states (p. 4) "It is not entirely clear from the lengthy opinion what part each ground played in the reversal, but as we read the opinion we believe its action was based upon the following considerations:". Thereafter in six numbered paragraphs the Government discusses what it apparently conceives to be the six different bases upon which the court below rested its decision.

A clear-eyed reading of the opinion of the Circuit Court of Appeals will show that the Government has improperly analyzed the opinion and has incorrectly stated the issues involved in this case, and demonstrates beyond any doubt that the invalidity of the order of the District Judge purporting to authorize the Grand Jury to sit during the third

term of Court was the only basis relied upon by the Circuit Court of Appeals to support its judgment.

Ground No. 1 (pp. 5-8 of the petition), and Ground No. 3 (p. 8), both turn upon this holding. Ground No. 1 is the Court's square holding that since the order of the District Judge purporting to authorize the Grand Jury to continue to sit during the March term was void, the Grand Jury had no legal existence and the indictment returned was a nullity. Ground No. 3 asserted in the petition as being a basis for the decision relates to language in the opinion (not specified as error by the Government in the petition) which indicates that the Circuit Court of Appeals is of the view that a record to sustain a conviction for an infamous crime must affirmatively show that the indictment upon which such conviction is had is a valid indictment returned by a legally constituted grand jury. As the Court said (Tr. 189), this question was discussed because "it is so closely related to our discussion concerning the continuance matter * * *." The Court pointed out that since the order of the District Judge purporting to authorize the Grand Jury to sit during the March 1940 term was void, the District Court could not hold the record to have been complete in this respect on the theory that it took judicial notice of orders impaneling and authorizing the continued sitting of the Grand Jury. The opinion went on to point out that under these circumstances an allegation in the indictment purporting to state the substance of the orders of the District Judge impaneling it and authorizing it to continue to sit into a third term was not sufficient to show that it had legal authority to act at the time that it returned the indictment. The Circuit Court of Appeals cannot be said to have gone further than to hold that in this case the record was insufficient because as it pointed out earlier in its opinion, the last

order of the District Judge authorizing the Grand Jury to continue to sit was void.*

A decision grounded upon any one of the remaining grounds asserted by the petition to have been relied upon by the Circuit Court of Appeals would have required an entirely different judgment by that Court. Ground No. 2 (p. 8), relates solely to the fourth count of the indictment and therefore cannot have been the basis for holding that the conviction on counts 1, 2, 3 or 5 should be set aside. Ground No. 4 (p. 9), of the decision has to do only with the indictment insofar as it relates to respondents in No. 800 and obviously cannot have been the ground for reversing the judgment so far as Respondent Johnson is concerned. Ground No. 5 (p. 9), obviously relates only to the first count of the indictment and therefore could not have been the basis for holding that the conviction of Johnson on counts 2, 3, 4 or 5 should be set aside. Ground No. 6 (p. 9), relating to the testimony of the expert witness Clifford which the Court below held invaded the province of the Jury, certainly cannot be suggested as having been con-

* Any concern that the Government may have over the statement of the court below that "Failure of proof with reference to the allegation under discussion is, in our opinion, fatal to the judgment", should be dissipated by the same court's opinion in the case of *William R. Skidmore v. United States*, decided October 31, 1941, and reported in 123 F. (2d) 604. This case decided after the *Johnson* case demonstrates clearly that the views expressed in the *Johnson* case on this point were based solely upon the holding of the court that the February 28 order of the District Judge was void. The indictment in the *Skidmore* case was returned by the same Grand Jury that returned the indictment in the *Johnson* case, but the *Skidmore* indictment was returned during the February term during which the Grand Jury had legal existence, whereas the *Johnson* indictment was returned during the March term after the legal existence of the Grand Jury had terminated. Under these circumstances the court below did not require the Government to offer further proof of the allegation in the *Skidmore* indictment concerning the authority of the Grand Jury to return it. Having held in the *Johnson* case the void order of February 28 continuing the Grand Jury to the March term to be proof that the Grand Jury did not have authority to return the indictment, the court properly held that the allegation of the indictment itself as to the existence of such authority was not sufficient proof thereof. We submit that the court was right in both cases and there is no inconsistency in the holdings; and even if the Government contests this interpretation, certainly the *Skidmore* case as a later expression of the court below has removed any necessity for this Court deciding the point in the way the Government contends in the petition that it should be decided.

sidered by the Court as a ground for its decision, since had this been the ground of decision the Court would have remanded the cause to the District Court for a new trial.

It will be seen from the above that clearly the sole basis on which the Circuit Court of Appeals rested its decision that the judgment of the District Court should be reversed and the proceedings against Respondent Johnson arising out of the indictment finally terminated, was its holding that the indictment not having been returned by a legally constituted and acting grand jury was void. It will be shown, *infra*, that this holding of the Court on this point is correct, and in any event the question is not one warranting the granting of the petition. This is obviously not the proper case for the decision of any questions other than whether the Court below was right or wrong in holding the order of the District Judge void.

If this Court should grant certiorari and should find that the Circuit Court of Appeals was wrong on this point, it would then perforce reverse the judgment of the Court and would have two courses open for the further disposition of this cause. This Court could either (1) remand the cause to the Circuit Court of Appeals for further proceedings in accordance with its opinion for the consideration and decision of the other errors urged by Respondent in that Court, including those points on which the Court below expressed views but did not rest its decision and points which were not discussed, or (2) it could itself undertake to consider and pass upon the some 200 separate assignments of errors which Respondent has noted (R. 1041-1064). It could not, as the Government infers in its petition, affirm the judgment of the District Court without having considered each of these numerous separate assignments of error and found them to have been without merit. It does not seem rash to assume that the first of these alternatives is the one that this Court would take.

What judgment the Circuit Court of Appeals would

enter after such a remand, and the grounds upon which it would rest such judgment, are purely speculative. None of the questions mentioned in the petition, which does not relate to the legal existence of the Grand Jury at the time the indictment was returned, will come squarely before this Court (in this case) unless this Court grants the instant petition, holds the court below to have been in error in having held the indictment invalid, and, after a remand to the court below for consideration of the questions arising out of the other errors assigned, finds the case again before it on a petition for certiorari. If these questions are important because they may rise to plague the Government in other cases, it certainly follows that a petition for certiorari in such of these other cases as may be necessary to set the questions at rest is the most appropriate way to elicit an expression of this Court's views upon them.

Since the order which the Circuit Court of Appeals must enter to effectuate its judgment will finally terminate all proceedings against Respondent Johnson, it is obvious that the ground for that Court's judgment must be one which goes to the invalidity of the entire proceedings in the District Court, and not one or several of which would require a remand for a new trial or other appropriate proceedings. The only error which the court below discussed in its opinion which requires a reversal of the judgment of the District Court and a dismissal of the proceedings against Respondent Johnson is the error found in the February 28, 1940, order of the District Judge. Had the Court below held the order of February 28, 1940, valid, and based a different judgment and remand on one or more of the other errors committed by the District Court, it would not have concluded its opinion with the simple statement: "In view of what we have said, it necessarily follows that the judgment must be reversed"; it would have set forth instructions as to what additional

steps were necessary to conform to a judgment based on the other errors.

The Government's attempt to persuade this Court that the judgment of the court below rests upon a "variety of grounds" evidences either an improper analysis of the opinion of the court below or an effort to compensate for the weakness of its case by raising false issues.

II.

The Indictment Was Not Returned by a Legally Constituted Grand Jury.

The Government does not contest the proposition that a grand jury in order to have legal power to act at a term subsequent to the term at which it is impaneled must have been authorized to continue to sit by an order of a district judge in conformity with section 421, title 28, U. S. C., Supp. Neither does the Government dispute the fact that section 421, title 28, U. S. C., Supp., empowers a district judge only to authorize a grand jury to continue to sit through a term subsequent to a term at which it was impaneled *solely* to finish an investigation commenced during the term at which it was impaneled. Section 421, title 28, U. S. C., Supp., is explicit in that respect and is clearly designed to preclude and prohibit a grand jury from commencing any investigation except during the term of court at which it is originally impaneled.

The question in the instant case which was presented to and decided by the court below was: Did the order of the District Judge purporting to authorize the December, 1939 Grand Jury to sit during the March, 1940 term conform to said section 421, title 28, U. S. C., Supp., or did it violate said section by purporting to authorize the grand jury to continue to sit to finish investigations begun in the February, 1940 term? The determination of this question turns

upon the construction which should be given to the language of the order of the Judge of the District Court. The question to be resolved does not in any way involve an interpretation of section 421, title 28, U. S. C., Supp., itself, since the plain meaning of that section is conceded by all parties.

If the Circuit Court of Appeals correctly construed the language of that order, the order was not in conformity with section 421, title 28, U. S. C., Supp., the life of the grand jury terminated with the February 1940 term, and any action taken or indictment returned after the expiration of the February 1940 term was not the action of a legally constituted grand jury. The February 28 order recites that the grand jury in open court requested that an order be entered authorizing the grand jury

"heretofore authorized to sit during the February 1940 term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 *and the said February 1940* Terms of this Court, and which said investigations cannot be finished during said February 1940 Term of Court";

and then concludes,

"It Is Therefore Ordered That the Second December 1939 Grand Jury, * * *, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing *said investigations*." (Emphasis supplied.)

The court below held that the order of the District Judge in terms authorized the grand jury to continue to sit during the March, 1940 term to finish investigations commenced during the February, 1940 term as well as investigations commenced during the December, 1939 term. It is submitted that no one reading said order could construe it as having any other meaning. Even the Govern-

ment's petition does not suggest that, taken by itself, the order can be given any other meaning or that it has no meaning. Equally clearly such an order was not in conformity with, but was in violation of, section 421. The Government itself does not contend otherwise.

The petition instead rather naively suggests (p. 13) "• • • this order may perhaps have been inartistically drawn. • • •". Its lack of artistry evidently lies in its failure to conform to section 421, for certainly it is not an inartistic expression of the District Judge's intention to authorize the grand jury to finish in the March term investigations which it commenced in the February term. If this were its purpose it is certainly not open to attack on artistic grounds.

The Petitioner makes the amazing suggestion (p. 13) that the meaning of this order is not to be found by reading it but by referring to the January 24 order of the District Judge authorizing the grand jury to continue to sit during the February term to finish investigations begun during the December term, and by referring to an allegation in the indictment returned by the grand jury on March 29 which contains what purports to be the grand jury's interpretation of the effect of this order.

The petition ignores the basic canon of construction of any document, namely, that if the document is plain and intelligible on its face, its plain meaning is in law its true meaning. In any event, the two interpretation keys suggested by the Government are not available for that purpose even if it be assumed that the order of the District Judge is sufficiently ambiguous to admit of the use of other writings or statements for its proper interpretation. It should, perhaps, again be noted that the Government does not anywhere suggest that a plain reading of the order shows it to be in conformity with section 421, title 28, U. S. C., Supp. Obviously, such a suggestion cannot be advanced.

The argument based on reference to the January 24 order seems to be that since the grand jury could not under this order properly commence any investigations during the February term, the District Judge's order authorizing it to continue to sit during the March term cannot be construed as authorizing it to sit for the purpose of finishing an illegal investigation commenced during the February term. This argument boils down to the bald statement that since it would have been improper and in violation of the District Judge's order for the grand jury to have commenced an investigation during the February term, the District Judge could not have intended to authorize the grand jury to finish any such investigation, no matter what his order said. We concede that it would have been improper and illegal for the grand jury to have commenced any new investigation during the February term, but we submit that it does not follow therefrom that the District Judge did not intend, as his order provides, to authorize the grand jury to continue to sit to finish such investigations during the March term. This argument of the Government is not merely an assertion that if possible an order of a court or a judge should be construed in conformity with, rather than as being a violation of applicable law, but it is an assertion that a district judge is incapable of committing error and no matter what he says in his order, properly construed the order means what it legally could say and not what it actually does say.

The second document referred to in the petition as a proper guide for determining the true meaning and construction of the order of the District Judge is the indictment itself, particularly its allegation:

"* * * having begun but not finished during said December Term of Court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this Court in and for said division and district during the February

and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term of Court, pursuant to request of the United States Attorney and upon motion of the Grand Jury, * * *

A comparison of this allegation with the recital in the order of the District Judge entered February 28, purporting to authorize the continuance of the December Grand Jury from the February to the March term, which reads,

“Now comes the Second December Term 1939 Grand Jury * * * and in open Court requests that an order be entered authorizing them * * * to continue to sit during the * * * March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished during the said February 1940 Term of Court; * * *”,**

shows that the grand jury requested something entirely different from what its recital in the indictment says was granted. There would seem to be no more a basis for arguing that the Court's order meant what the recital in the indictment says it meant, than that the recital in the indictment meant what the Court's order said that the grand jury requested. From the standpoint of proof or persuasive weight, a recital by a District Judge in an order entered at the time a request is made in open court by a grand jury as to what said grand jury requested would seem to be entitled to greater consideration than an allegation in an indictment returned over a month later by the grand jury as to what said order authorized. Certainly it is a proposition whose novelty does not outweigh its absurdity to suggest that an allegation made in an indictment by a grand jury a month after an order has

* Note that there is no allegation that the investigation begun at the December term was not finished at the February term.

** Note that the grand jury was authorized to finish at the March term investigations begun at the February term as well as those begun at the December term.

been issued by a District Judge as to what the legal consequence, effect and meaning of said order is, is determinative of the real meaning of said order. Whatever weight might attach to a later statement of a District Judge as to the meaning of an order issued previously by him, certainly no persuasive value may be attributed to a statement of a grand jury as to what an order granted on its motion truly means.

We submit that the order is plain and unambiguous on its face, that no room exists for considering prior orders of the Court or subsequent statements of the grand jury as bearing upon its correct interpretation, and that in any event there is no legal basis for considering such documents as proper interpretative aids in construing the order. That the Government itself does not suggest seriously that this Court establish any such nonsensical precedent for interpreting the plain language of court orders is found in the very same paragraph of the petition (p. 13), in which the argument is advanced. Then in the same sentence the statement is made "The order was therefore valid," and the cleverly couched argument is added "and in any event, the indictment was in fact the product of investigations which were begun during the December term, so that even if the grand jury were given excessive authority it actually confined its activities within permissible limits." The Government is not even confident enough of the conclusion which it suggests follows from its novel method of interpretation to let it stand on its own feet as a sentence, much less the conclusion of a paragraph. The petition goes on in carefully chosen words to argue (p. 14), that granting the order to have been void, nevertheless the grand jury acted as it should have had it been continued by a valid order, and its actions were therefore valid. This argument only needs statement in unambiguous language to fall of its own weight, for obviously no matter how much like a legal and proper grand jury any group of 23 men may act, unless

they are in fact a legal grand jury, they cannot return a valid indictment. They have not the power of self-creation and their adherence to legal form cannot infuse them with legal life.*

The Government's argument (p. 14) that Section 556, Title 18, U. S. C., saves the indictment scarcely merits an answer. Our position is not that there is some defect or imperfection in the indictment. Our position is that there is no indictment. However perfect the pleading it is not an indictment unless it is returned by a legal grand jury.

Since the order of the District Judge of February 28, 1940, was void, the life of the grand jury terminated at the expiration of the February 1940 term (*In Re Mills*, 135 U. S. 263, 267; *Jones v. United States*, 162 Fed. 417, 421; *Nealon v. People*, 39 Ill. App. 481, 483), and since the indictment upon which Respondent was tried was returned on March 29, 1940, which was after the expiration of the February 1940 term, the indictment was not returned by a legal grand jury and the conviction based upon such indictment was therefore properly reversed. Fifth Amendment, United States Constitution.

*The argument that, granting the grand jury was not validly authorized to continue to sit during a third term of court, it nevertheless could return a valid indictment if it did what a grand jury legally authorized to sit should have done, cannot be given any consideration whatsoever. Its use in this case, however, is even more objectionable, since the record clearly shows that the grand jury in returning the indictment upon which these proceedings were taken acted improperly even if it be conceded that it had a valid and legal existence at the time the indictment was returned, as reference to the opinion of the Court of Appeals will show with respect to the fourth count of the indictment. With respect to other counts of the indictment, the record is bare of evidence because although respondents sought to put the matter in issue by a motion to quash and plea in abatement, the Government refused to answer the motion and respondents were not permitted to introduce evidence on the point (Tr. 45).

III.

The Question Presented in This Case Is Not a Proper Basis for a Grant of a Writ of Certiorari.

The question of whether a circuit court of appeals has correctly or incorrectly construed the language of an order of a district court, there being involved no important constitutional question, question of statutory interpretation, or question of the administration of any law, does not present a proper case for the issuance of a writ of certiorari.

The Government in its petition (p. 15), states "the alleged invalidity of the indictment was the principal ground of reversal * * *." And on the same page states "* * * the decision below, to the extent that it merely turns upon the interpretation of the February 28 order (the basis for holding the indictment invalid) may not have any immediate impact upon other cases * * *."

The Government certainly could not contend otherwise, for obviously the holding of the Circuit Court of Appeals that the particular order of the District Judge in this case was not in conformity with Section 421 could have no effect upon other orders drawn in conformity with that section. The opinion in fact points out the proper way in which to conform to Section 421, and if anything, should be helpful to the Government in the prosecution of other criminal cases.

The Government does not contend that the question of whether the order of the District Judge purporting to authorize the Grand Jury to continue to sit during the March term is void or not raises any question of statutory interpretation. There is no question raised as to the meaning of Section 421, Title 28, U. S. C., Supp. It is in effect conceded by the Government that if the February 28 order

of the District Judge meant what the Circuit Court of Appeals held that it meant, it is not in conformity with the said section. Nor is there any question raised that the Fifth Amendment to the Constitution requires that a conviction for an infamous crime be based upon indictment returned by a grand jury.

This Court has consistently interpreted Section 240 of the Judicial Code (U. S. C., Title 28, Sec. 347) as not requiring this Court to consider as being determinative of whether a writ of certiorari should issue, the question of whether a court to which such a writ may issue has ruled erroneously. It is the implications, consequences and the nature of the error involved rather than the question of whether error has been committed that is decisive of whether the writ should issue. No case has been found by Respondent which would support the proposition that, where the only error of a circuit court of appeals consists of its failure rightly to read the language of an order of a district judge, and there are no important consequences of a precedential character, and no important questions of constitutional, statutory or administrative interpretations are involved, a proper case for the issuance of a writ of certiorari is presented. This is true even where the Circuit Court of Appeals is manifestly wrong in reading the language of the order of the District Court. It is certainly not open to question, where as here, one must torture plain language out of its plain meaning even to argue that the order is ambiguous enough to admit of any interpretation other than the one placed upon it by the Circuit Court of Appeals.

IV.

The Decision of the Circuit Court of Appeals Does Not Result in a Miscarriage of Justice and Does Not Call for the Exercise of This Court's Supervisory Powers.

The contention of the Petitioner (p. 12) that this case involves "such a miscarriage of justice as to call for the exercise of this Court's supervisory powers" is not supported by (a) the record, or (b) the allegations of the petition. We submit that this question is not properly before the Court on this petition but since it is presented by the Petitioner we answer it.

A.

The Record Fails to Show Johnson Is Guilty as Charged.

The language of Judge Hutcheson in *Symonette v. United States*, 47 Fed. (2d) 686, 687, so aptly describes the case at bar that we adopt it:

"This is one of those cases, of which the books contain too many instances, of an effort by the government, on a conspiracy indictment, to supply the place of testimony by piling inference upon inference; of an effort to make deduction take the place of proof; and to have the jury, by reasoning backward from non-criminal acts, build up by inference a state of facts to make them criminal, which, if they in fact exist, the evidence ought to have established."

There is no direct proof that Defendant Johnson has failed to return taxable income for any year. The direct proof is that he has returned all taxable income for the past twenty years, and particularly for the years 1936, 1937, 1938 and 1939, covered by the indictment, and that he has paid all income taxes due the Federal Government.

The prosecution sought to prove by circumstantial evi-

dence its charge of wilful attempt to evade under the first four counts and of conspiracy to defraud by evading under the fifth count by two approaches. We confidently believe that this record presents a case where there is a total failure of proof on either theory, but if we are in error in this, at least the record is one that is so close on the facts that it should be free from substantial errors.

Johnson could not be guilty of attempting to evade a tax unless some tax was due. (*Gleckman v. United States*, 80 Fed. (2nd) 394, 399.) Johnson was not required to prove that he had paid all taxes due from him. The burden of proof in a criminal case never shifts to the defendant. (*McKnight v. United States*, 115 Fed. 972, 974; *Chaffee v. United States*, 18 Wall. 516, 545.) It is also settled law that unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused, (*Nicola v. United States*, 72 Fed. (2nd) 780, 786; *McClintock v. United States*, 60 Fed. (2nd) 839, 842) and that where the evidence for the prosecution is as consistent with innocence as with guilt, a judgment of conviction will not be sustained by a reviewing court. (*Unicquerra v. United States*, 21 Fed. (2nd) 508, 510; *Bishop v. United States*, 16 Fed. (2nd) 410, 417.) The law requires that there be more than some evidence of guilt. (*Toubin v. United States*, 93 Fed. (2nd) 861, 866.) The proof must be of that substantial character which leaves an abiding conviction that the accused is guilty of the offense charged.

The circumstantial evidence in this case must be weighed in the light of the fact that Johnson has filed income tax returns regularly for twenty years (R. 960) and his returns have been regularly audited and that no fraud penalty was ever assessed against him until this indictment was returned (R. 7-8) and also in the light of Johnson's good reputation for truth, honesty and fair dealing (R.

916-920). The Government wholly fails to prove by competent evidence that Johnson had any taxable income which he did not return for any year.

B.

The Petition Does Not Show There Has Been a Miscarriage of Justice.

It will be seen, therefore, that the record does not support the assertion of the Government that a "miscarriage of justice" has occurred. By that phrase the Government apparently means that one who is guilty in fact of the commission of a crime as charged is not being punished therefor. In other words, abstract justice is not being vindicated, although legal justice may be being administered. In this case, of course, if the indictment is a nullity because the body which returned it was not a legally constituted Grand Jury, justice under our laws is not being had if the respondent is made to serve a sentence, although if he is really guilty of having evaded his income tax as charged, abstract justice might be served by his being fined and jailed notwithstanding that his constitutional rights are violated in the process.

It seems singularly inappropriate for the Government to urge this contention in this proceeding, for if their position is sound, Johnson may be made (without regard to whether he may be reindicted and retried and convicted) to answer in a civil proceeding not only for the allegedly large amounts of unpaid taxes, plus interest, but for an enormous tax penalty. We recognize, of course, that in legal theory a 50 percent tax penalty assessment is not to be considered on the same footing as a fine imposed in a criminal trial. We do submit, however, that it is as serious a financial punishment to pay money denominated as a tax penalty to the Government as it is to pay money denominated as criminal fine to the Government. In fact,

in the same lay sense in which the word "justice" is used in the phrase of the petition "a miscarriage of justice", a 50 percent additional tax assessment may be called a punishment inflicted upon the Defendant, so that abstract justice may be vindicated (if it is defeated, which we vigorously deny, by the setting aside of the convictions herein) by the imposition and collection of a staggering assessment in a civil proceeding, a matter which if the Government is correct in its conclusion, should be comparatively easy.

The petition alleges (p. 12) that a reversal of the trial court "based primarily upon technical grounds is, we believe, such a miscarriage of justice as to call for the exercise of this Court's supervisory powers."

Presumably if the reversal were based upon *substantial* rather than upon "technical" grounds, the Government would not contend that this Court solely in the exercise of its supervisory powers should step in to prevent what the Government is pleased to call "a miscarriage of justice."

The reversal is based primarily on the ground that only a legally constituted Grand Jury can return an indictment upon which under our Constitution a conviction for an infamous crime may be sustained. A conviction obtained without such an indictment is not merely technically defective but is void because a basic constitutional right of the accused has been violated.

Not only is the reversal of the judgment by the Circuit Court of Appeals not a miscarriage of justice, but the prosecution of the respondent Johnson has been a perversion of the administration of justice. The respondent Johnson gambles. He has never contended to the contrary. But the Government went to such lengths to show that he was a gambler, in its attempt to prejudice the jury, that the Circuit Court of Appeals was moved to remark:

"The offense charged was evasion of income tax—

not gambling or operating gambling houses. A person reading the record, without knowledge of the charge, could reasonably conclude that the defendants were tried on the latter offense." (123 Fed. (2nd) 126.)

It is difficult to believe that a United States Attorney would waste the time of a court and of a jury by presenting testimony entirely extraneous to the issue of income tax evasion, however pertinent it might be in a trial for violation of state gambling statutes, unless he felt that without such evidence a conviction could not be obtained. Whether a righteous indignation against one who is engaged in an activity that might violate state gambling laws or a desire for the publicity in store for one who could convict a gambler for anything from overtime parking to income tax evasion motivated this type of trial tactics is unimportant. It goes without question that they are out of harmony with the tradition and spirit of our jurisprudence and form of government which guarantees equality before the law to low-born as well as high, and proudly takes the onus of refusing to permit persecution of the least worthy with the same assurance of essential rightness that it vigorously protects the most worthy.

It is not the virtue or vice of a man's character, but what he has done that he must answer for when charged with crime in the courts of our land. To maintain that principle today, our property and our lives alike are dedicated against a threat by those whose basic philosophy may be summed up as saying what a man is counts and what he does is unimportant,—if he is of the right race, or creed, or profession, he should be exalted; if he is of the wrong race, or creed, or profession, any oppression is justified.

It is hard to read the record and not believe that however willing Johnson may have been to violate the statutes of the State of Illinois dealing with gambling, he had no desire or intention to bring down upon his head the wrath of the Bureau of Internal Revenue. Parenthetically, it may

be said that it is anomalous indeed to assume that Johnson, a professional gambler, would play a game with the Bureau of Internal Revenue in which he would pay large sums to the Bureau without minimizing his risks or losses, but on the contrary increasing them, for by the very fact of filing returns and reporting large income he invited close scrutiny.

It is surprising, indeed, that the conjunction which is not only a nonsequitur in logic but is repugnant to our system of laws, between Johnson's profession and his guilt or innocence of the charge of income tax evasion, should appear not only in the trial of this case in the District Court, but should also appear in the petition for certiorari. There it appears not merely as a pardonable inclusion of the statement of the case, but in rhetorical splendor in the very first line of the section headed "Reasons for Granting the Writ" (p. 11). That section starts "The respondent Johnson, a professional gambler of 'towering stature among that fraternity,' was convicted together with five co-defendants of evasion of large amounts of income taxes after a long jury trial." How the Petitioner determined that Johnson was convicted of evasion of "large" amounts of income taxes, it does not deem it necessary to inform the Court or the Respondent. We freely concede that the Government attempted to prove Johnson was guilty of evasion of large amounts, but how large the amount of the evasion was found by the jury to be we do not know, nor does the record disclose. Nor, incidentally, do we know why the Government deemed it important to characterize the trial of the Respondent as being a "long jury trial". Its length was certainly attributable more to the Government's excursions into interesting but nonetheless irrelevant fields of the operation of professional gambling houses and to the roundabout and speculative nature of the Government's case which consisted of massing unimportant and trivial testimony to take the place of persuasive direct evidence.

This Respondent Did Not Have a Fair Trial.

Frank J. Clifford, a Government agent who qualified as an accountant, made a summary of the evidence for the Government and testified to the conclusions that Defendant Johnson had net taxable income for the years 1936, 1937, 1938 and 1939 in excess of that which he reported (Vol. IV). It will appear from an examination of the testimony of this witness that he *weighed* all of the evidence in the record, that he *determined* the credibility of the witnesses, that he *accepted* the evidence which supported the theory of the prosecution, that he *rejected* the evidence brought out on cross-examination of Government witnesses and the statements of defendants offered by the Government which supported the theory of the defense, that he *concluded* from an examination of *all* the evidence that Defendant Johnson was guilty and *expressed* his conclusion to the jury. To permit this witness to thus invade the province of the jury and to determine the very questions at issue is in direct conflict with the holdings in *United States v. Spaulding*, 293 U. S. 498, 506; *Dexter v. Hall*, 82 U. S. 9, 26; *United States v. Cole*, 82 Fed. (2nd) 655, 657; *Wilkes v. United States*, 80 Fed. (2nd) 285, 291; and *United States v. Stephens*, 73 Fed. (2nd) 695, 704.

Clifford was asked to consider all of the evidence in the record and to state the net cash income reported by Johnson for the years 1932 to 1939 inclusive. Then he was asked to state the total amount of expenditures by Johnson for the same eight-year period. He stated that the income reported was \$1,188,041.83 and then volunteered that the total cash Johnson had available for the eight-year period was \$1,256,041.85. He stated that Johnson's total expenditures were \$1,730,391.39 (Vol. IV, p. 14). In computing expenditures Clifford assumed Johnson made all expenditures on the property at 9730 South Western Avenue and ignored testimony of Government witnesses that Skid-

more owned half of the property and paid for the improvement of it (Vol. IV, p. 20). Clifford also assumed that Johnson was the sole owner of Bon-Air Country Club, relying on the uncorroborated but impeached testimony of Goldstein (Vol. IV, pp. 21-22), and he included all expenditures made in connection with the acquiring and improving of Bon-Air Country Club (Vol. IV, p. 49) without any direct proof that Johnson had made all of these expenditures but inferring that he had because he held title to the property.

Getting down to years, Clifford was asked to consider all the evidence in the record and to compute the total amount of income of Johnson for 1936, and over objection he answered \$547,942.38 (Vol. IV, p. 15). He was then asked to state from the evidence in the record the amount of Johnson's income for 1937. Similar questions were asked as to 1938 and 1939 (Vol. IV, pp. 16-18). In computing Johnson's income for 1936 Clifford included all the \$100 bills that came from the Lawndale Currency Exchange, all of the currency deposited by the Albany Park Currency Exchange with the Milwaukee Avenue National Bank, all the currency exchanged and checks cashed by gambling house operators at The Northern Trust Company, all checks cashed at the Albany Park Exchange and marked on its records J. S., M. D., 1, 2, 3, H. S., D. D., or K. L., which he assumed were gamblers' checks, and all checks cashed and currency exchanged by Creighton at Mid-City National Bank (Vol. IV., pp. 27-28), *without a syllable of proof that Johnson had any interest in these transactions, or that he ever received one cent of the proceeds thereof.* Johnson's income for 1937, 1938 and 1939 was computed by Clifford on the same unsupported assumptions that every financial transaction of the eight co-defendants were transactions of Defendant Johnson and that the aggregate of these transactions represented taxable income of Defendant Johnson (Vol. IV, pp. 29-34).

Clifford's conclusion that Johnson had a greater income than \$173,220.40 reported in 1936, than \$264,015.13 reported in 1937, than \$120,975.15 reported in 1938 and than \$268,885.98 reported in 1939, is pure conjecture. His conclusions are presumptions based on presumptions.

By overruling Defendant's objections (R. 741-743) and Defendant's motion to strike (R. 762) the Court in effect told the jury that Clifford was right in rejecting the evidence that did not suit the purpose of the prosecution, in accepting at face value all of the evidence which was against the defendants, and in concluding that all financial transactions of co-defendants were Johnson's transactions and that the aggregate of these transactions represented taxable income of Johnson. The rulings of the Court amounted to an instruction to the jury that Clifford's deductions were sound and that Johnson had an income for each of the four years grossly in excess of the income reported by him and left the jury no choice except to return a verdict of guilty. *By its action the Court substituted a trial by a Government agent for a trial by jury.**

The assignments of error detail scores of erroneous rulings in the admission of evidence (R. 1043-1054) but we shall not discuss them. We think the assignments speak for themselves. Most damaging of the evidence received against Defendant Johnson was that of numerous banking and currency exchange transactions by co-defendants, without any evidence connecting Johnson with such transactions (Assignments 16(y)-16(cc)). This hearsay evi-

*The testimony of the same Clifford held by the court below in the *Skidmore* case, 123 Fed. (2d) 604, to have been proper was in marked contrast to his testimony in this case. The differences which are clear from a reading of the two opinions demonstrate not merely the difference between proper and improper testimony of an expert witness but show that the views expressed on Clifford's testimony in this case by the court below are not either "arbitrary" nor so restrictive as to embarrass or hamper the Government in the employment of expert testimony. We submit that the court was right in both cases and there is no inconsistency in the holdings; and even if the Government contests this interpretation, certainly the *Skidmore* case as a later expression of the court below has removed any necessity for this Court deciding the point in the way the Government contends in the petition that it should be decided.

dence is the sole basis of the *amount* of Johnson's income for the years 1936 and 1937 and the basis for the *amount* of a major portion of his income for 1938 and 1939. The evidence of the transactions in the Reserve for Uncollected Funds account on the books of the Lawrence Avenue Currency Exchange was rank hearsay, (Assignments 16(w), 29(i), 38), but this evidence, plus the evidence of the banking transactions, constitute the only basis for the *amount* of income for 1938 and 1939. The admission of the hearsay testimony of agent Lawrason who summarized a lot of checks found at Mid-City National Bank by an examination through a projector of illegible Recordak films was grave error (Assignments 50-51). There was also dumped into the hopper five Nationwide News Service books, each containing more than one thousand separate customers' accounts, but not a single one of these accounts was identified with Defendant Johnson (Assignment 30). The individual income tax returns of the various co-defendants were hearsay as to Defendant Johnson and were prejudicial to him (Assignments 17-22). Score of witnesses were permitted to recite the details of the operations of gambling houses by the several co-defendants and to relate conversations and describe transactions that took place outside the presence of Defendant Johnson, and certain gamblers were permitted to relate in detail their experiences at various gambling houses and to recount their losses (Assignment 31). It cannot be said that the admission of this improper evidence was not prejudicial. It has been held that a conviction in a criminal case should not be affirmed unless it is made to appear beyond doubt that the improper evidence admitted did not prejudice the rights of the accused. *Sprinkle v. United States*, 150 Fed. 56, 59; *McCandless v. United States*, 298 U. S. 342, 347; *Little v. United States*, 73 Fed. (2nd) 861, 866.

The cross-examination of Johnson was highly improper and prejudicial (R. 966-968, 976, 980). Wait was cross-examined at length with respect to Johnson's connection

with dog tracks in 1927 and there was the implication that there was something wrong about the arrangements made and the persons with whom Johnson dealt (R. 903). When the prosecutor cross-examines to degrade the Defendant and prejudice him with the jury, he cannot be heard to say that the cross-examination did not do what he intended it should do. (*Salerno v. United States*, 61 Fed. (2nd) 419, 424; *Coulston v. United States*, 51 Fed. (2nd) 178, 182; *Miller v. Territory*, 149 Fed. 330, 339.) Obviously, improper matter brought to the attention of the jury by remarks of the prosecuting attorney, or by the questions of the cross-examiner, is no less prejudicial than evidence erroneously admitted over objections. *Towbin v. United States*, 93 Fed. (2nd) 861, 868; *Skuy v. United States*, 261 Fed. 316, 319; *Berger v. United States*, 295 U. S. 78, 84.

Where a defendant requests the Court to instruct on matters that are material to the issues and these instructions are refused and the jury is left without guidance on these matters a judgment of conviction should be reversed. (*Gold v. United States*, 102 Fed. (2nd) 350, 352; *Nanfita v. United States*, 20 Fed. (2nd) 376, 379; *Feder v. United States*, 257 Fed. 694, 696; *Aetna Life Ins. Co. v. Moore*, 231 U. S. 543, 556.) Requested instructions 38, 39 (R. 1028), 57 (R. 1031), 59 to 72, inclusive (R. 1031-1032), 73, 75 (R. 1032) and other requested instructions, not necessary to mention here, were erroneously refused. With these instructions omitted, the charge gave undue emphasis to statutory requirements with regard to the making of income tax returns (R. 1014-1015) and fixed in the minds of the jury that irregularities in the form of returns made by Defendant Johnson, and for many years accepted by the Collector, were evidence in support of the charges against him.

Sending to the jury a mass of documents lays undue emphasis on a part of the evidence, and the Court should permit the jury to have only such exhibits as it finds nec-

essary to a proper consideration of the case. (*Buckley v. United States*, 33 Fed. (2nd) 713, 717; *People v. Clark*, 301 Ill. 428, 432.) It is error to permit exhibits to go to the jury which contain prejudicial matter, even though parts of the exhibits are material and properly in evidence. (*United States v. Dressler*, 112 Fed. (2nd) 972, 978.) The presumption is that the presence in the jury room of improper exhibits is injurious to the defendant. (*Ogden v. United States*, 112 Fed. 523, 527.) It is impossible to tell what damaging effect upon the minds of the jury resulted from the truckload of exhibits that was hauled into the jury room. Every document which was received in evidence was delivered to the jury over the objection of defendants (R. 1023-1024). The jurors had much of the Government's evidence before them in writing but were left to remember the defendants' explanation of the various exhibits or their testimony with respect to them. It was reversible error thus to invade the jury room with this great mass of exhibits, many of them containing rank hearsay and grossly prejudicial matter.

This respondent should not be deprived of his liberty until he is charged by an indictment returned by a legal grand jury and convicted upon a trial conducted according to law.

CONCLUSION.

The decision of the Circuit Court of Appeals is correct and involves no error of law, and in any event presents no question justifying issuance of a writ of certiorari either in the exercise of this Court's supervisory powers or under any of the rules laid down to govern the granting of such writs. The petition for writ of certiorari should be denied.

Respectfully submitted,

FLOYD E. THOMPSON,

WILLIAM J. DEMPSEY,

Attorneys for Respondent.

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CHARLES ELMOORE COOLEY

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1941

No. 799 4

THE UNITED STATES OF AMERICA

vs.

WILLIAM R. JOHNSON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR WILLIAM R. JOHNSON.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1941

No. 799

THE UNITED STATES OF AMERICA

vs.

WILLIAM R. JOHNSON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR WILLIAM R. JOHNSON.

STATEMENT OF THE CASE.

This case is before this Court pursuant to writ of certiorari granted on the petition of the Government to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit, which reversed a judgment of the District Court for the Northern District of Illinois entered on a verdict of a jury finding this defendant, William R. Johnson, guilty of wilfully attempting to evade the payment of income taxes for the years 1936, 1937, 1938 and 1939, and of conspiracy to defraud the United States of income taxes. Opinion below, 123 Fed. (2nd) 111.

The statement for the Government is incomplete and consists principally of mere conclusions without foundation in competent evidence. We feel that it is our duty to state the case so that this Honorable Court will more readily understand the errors of the District Court on which we relied for reversal of its judgment and now rely for affirmance of the judgment of the Circuit Court of Appeals.

The errors assigned in the Circuit Court of Appeals arose out of the overruling by the District Court of this defendant's motion to quash the indictment, the overruling of the demurrer to the indictment, the denial of his motion for a more specific bill of particulars, the overruling of objections to the admission of evidence, the improper cross-examination of this defendant and his co-defendants, the denial of this defendant's motion to direct a verdict of not guilty, the denial of his motion for a mistrial, the refusal of his requested instructions, the sending with the jury on retirement of exhibits containing prejudicial matter, the denial of the motion for a new trial, and the denial of the motion in arrest of judgment.

The Pleadings, Motions and Orders.

This prosecution was commenced by the return of an indictment at the March 1940 Term by a grand jury for the December 1939 Term of the District Court which was continued to the February Term and then to the March Term.

Defendant Johnson filed his verified motion to quash the indictment on the following grounds:

(a) The order entered at the February 1940 Term, purporting to authorize the continuance of the December 1939 grand jury to the March 1940 Term, is void in that it authorized said grand jury to continue its service through said March Term to finish investigations begun by it at said February Term, whereas the Court had authority

under the statute to continue said grand jury solely to finish investigations begun by it at the said December Term and not finished by it at said December Term or at the succeeding February Term.

(b) The fourth and fifth counts allege facts which show that the matters alleged with respect to the year 1939 were not presented to said grand jury at said December Term but were first presented at said March Term when said grand jury had no authority to hear such matters.

(c) The first, second and third counts are exact duplicates respectively of the three counts of the indictment in No. 32127 returned by the same grand jury against this defendant at said February Term on March 1, 1940, which shows that the investigation of the matters contained in said first three counts was finished and concluded at said February Term, by reason of which the Court had no authority under the statute to continue said grand jury to investigate said matters at the succeeding March Term. I. R. 28-31.

Defendant filed a motion to require the Government to answer the allegations of fact set forth in his motion to quash. (I. R. 44.) The District Court denied the motion for rule on the Government to answer and it overruled the motion to quash. (I. R. 45.) The Circuit Court of Appeals held that the District Court erred in denying the defendant an opportunity to prove the facts alleged and in overruling the motion to quash. I. R. 182-188.

Defendant Johnson also filed a demurrer to the indictment urging the following grounds of insufficiency:

(a) The indictment and each count thereof fail to allege facts which state an offense under the statutes of the United States.

(b) The indictment and each count thereof omit averments of fact necessary to show the authority of the De-

cember 1939 grand jury to return this indictment at the March 1940 Term.

(c) The first four counts of the indictment are duplicative and repugnant in that they charge that this defendant did on a certain day attempt to evade and also that the attempt to evade was a continuing offense beginning prior to the day certain and continuing to the date of the indictment. Each of said counts also charges four separate offenses,—(1) the attempt to evade income taxes, (2) the filing of a false income tax return, (3) the failure to supply records and other information relative to income, and (4) the failure to make a return as to certain income. I. R. 37-38.

The demurrer was overruled by the District Court (I. R. 45) and as to this defendant the Circuit Court of Appeals held that the demurrer should have been sustained as to the fourth count (I. R. 189), and that the demurrer was properly overruled as to the first, second, third and fifth counts. I. R. 190.

Upon the motion of defendant Johnson for a bill of particulars (I. R. 47), an order was entered requiring certain particulars to be furnished (I. R. 62) and a bill of particulars was filed which stated only that the income alleged consisted of the income from a group of named gambling houses, including currency exchanged and proceeds of checks cashed by other persons named. (I. R. 64-72.) Thereupon defendant filed his motion for a more specific bill of particulars, (I. R. 134-139,) which was refused. (I. R. 140.) Thereafter the Government voluntarily filed a short supplement to the bill of particulars (I. R. 141-142) which did not supply the information desired by this defendant.

At the close of the evidence for the prosecution defendant Johnson filed his motion for a directed verdict of not

guilty (I. R. 146) and his motion to require the prosecution to elect whether it would proceed on the first four counts or upon the fifth count (I. R. 145-146), both of which motions were overruled. (I. R. 147.) Again at the close of all the evidence these motions were renewed (I. R. 148) and there was also a motion to withdraw a juror and declare a mistrial (I. R. 151-152), all of which were overruled.

Theory of the Case.

The prosecution sought to sustain the allegations that defendant Johnson failed to report all of his taxable income for the years 1936 through 1939 by two distinct methods:

(a) By undertaking to prove that he owned a group of gambling houses operated in and about Chicago and that all the proceeds of checks cashed and currency exchanged by persons operating these gambling houses were income from these gambling houses, and therefore that the aggregate of these financial transactions was taxable income of this defendant which was in excess of the amount of net income which he reported; and

(b) By offering proof that he expended in said years more cash than he had available for spending according to the income reported and admitted assets.

It is the position of this defendant that he did not own any of said gambling houses and that he had no interest in any of the financial transactions, and also that he had available from reported income and accumulated capital cash exceeding his expenditures, and that there is a total failure of proof that he had a taxable income, which he did not report, in any of the four years.

The Facts.

This is not the usual income tax evasion case. William R. Johnson filed returns regularly from 1921 to the present

time and his returns have been regularly audited. (III. R. 960.) At no time during all this period was he charged with fraud until the investigations which resulted in his indictment in 1940. There have been the usual tax adjustments from year to year and if it was found that Johnson owed more tax than he had paid he paid the additional amount. Only once was he assessed the five per cent. penalty for negligence in the preparation of his return and that was nearly ten years ago. II. R. 8.

This defendant was born in Chicago and has lived there continuously during the forty-five years of his life, and bears a good reputation among the citizens of the community for truth, integrity and fair dealing. The parish priest, the family physician, two neighbors and four business men testified to a long acquaintance with Johnson and vouched for his good reputation among the people of Chicago and vicinity. III. R. 916-920.

There were received in evidence Johnson's returns for the years 1932 to 1939 inclusive. (II. R. 8-9.) His return for the calendar year 1932 (Gov. Ex. R-6) showed a net income of \$74,553.85, for 1933 (Gov. Ex. R-7) of \$80,079.85, for 1934 (Gov. Ex. R-8) of \$142,125.43, for 1935 (Gov. Ex. R-9) of \$68,211.14, for 1936 (Gov. Ex. R-10) of \$173,220.40, for 1937 (Gov. Ex. R-11) of \$264,015.13, for 1938 (Gov. Ex. R-12) of \$120,975.15, and for 1939 (Gov. Ex. R-13) of \$268,885.98. His accountants usually reported his income from gambling as "Miscellaneous Speculative Income". II. R. 103, 437.

Government Agent Clifford computed this defendant's income for 1936 to be \$547,942.38. (III. R. 742.) In making this computation Clifford included all the proceeds from checks cashed and the estimated total of currency exchanged by co-defendant Sommers at the Northern Trust Company, all of the proceeds of checks cashed and the estimated total of currency exchanged by co-defendants

Sommers, Kelly and Hartigan at the Albany Park Currency Exchange, and all of the proceeds of checks cashed by co-defendant Creighton at the Mid-City National Bank, and by co-defendant Flanagan at the Lawndale Currency Exchange. III. R. 750-751.

Clifford computed this defendant's income for 1937 to be \$1,047,129.77. (III. R. 743.) In making this computation Clifford included the estimated total of currency exchanged by co-defendant Sommers at the Northern Trust Company, the proceeds from checks cashed by co-defendants Sommers, Kelly and Hartigan at the Albany Park Currency Exchange, the total of the currency deposited by the Albany Park Currency Exchange at the Milwaukee Avenue National Bank, the proceeds of checks cashed by defendant Creighton at the Mid-City National Bank, and the total of the \$100 bills supplied to the Lawndale Currency Exchange by the Roosevelt Agency and Loan Company. III. R. 751-752.

Clifford computed this defendant's income for 1938 to be \$935,353.80. (III. R. 744.) In making this computation Clifford included the estimated total of the currency exchanged by co-defendant Sommers at the Northern Trust Company, the proceeds from checks cashed and the estimated total of currency exchanged by co-defendants Sommers, Kelly and Hartigan at the Albany Park Currency Exchange, the proceeds of checks cashed by co-defendant Creighton at the Mid-City National Bank, the total of \$100 bills supplied to the Lawndale Currency Exchange by the Roosevelt Agency and Loan Company, and 74.87% of the proceeds of the checks deposited for collection by the Lawrence Avenue Currency Exchange at the North Shore National Bank and at the Central National Bank. III. R. 752-753.

Clifford computed this defendant's income for 1939 to be \$961,504.77. (III. R. 745.) In making this computa-

tion Clifford included the estimated total of currency exchanged by co-defendant Sommers at the Northern Trust Company, the estimated proceeds from checks cashed by co-defendant Creighton at the Washington Park Currency Exchange, and \$886,499.30 which he calculated represented the balance of the estimated \$1,100,000 of gamblers' checks that went through the Lawrence Avenue Currency Exchange. III. R. 754.

These computations for each of the years were made on the assumption that defendant Johnson was the *sole* owner of all the gambling houses named in the indictment and that *all* checks cashed and currency exchanged by Sommers, Flanagan, Creighton, Kelly, Hartigan, Wait and Mackay represented *taxable income* of this defendant. III. R. 751.

Evidence Under First Theory.

All the direct evidence was to the effect that this defendant did not own, had no interest in, and received no income from any of the gambling houses named in the indictment or in the evidence, except such interest as he had in the Bon-Air Country Club gambling room through his ownership of stock in the Bon-Air Catering Company. Sommers was the sole owner and operator of the Horse-Shoe Club and of the Dev-Lin Club. (III. R. 782-787, 791-803, 810-812.) Creighton was the sole owner and operator of the Southland Club, the Club Western, the Select Club, the Vincennes Club, the Lake Park Club, the Harlem Club, the Club Proviso and the 406 Club. (III. R. 850-858.) Flanagan was the sole owner and operator of the 4020 Club, the 2141 Club and the service bureau, first located at 2135 South Crawford (now Pulaski) and later at 4707 Irving Park, which also had a rear entrance at 3765 Milwaukee. (III. R. 891, 931.) Hartigan was the sole owner and operator of Harlem Stables, (II. R. 462, III. R. 791, 792, 804-806), and of the gambling room

at Lincoln Tavern. (III. R. 896.) Mackay was the owner and operator of the Casino Club. (II. R. 330, 339, 375, 382.) Wait operated the gambling room at the Villa Moderne, (III. R. 896,) and was the president of the Bon-Air Catering Company, which operated the gambling room at the Bon-Air Country Club. (III. R. 910.) Johnson testified that he had no interest in and received no income from any of these gambling houses, (III. R. 949-950,) and that the gambling room at the Bon-Air operated only in 1939 and that the profits of about \$22,000 were credited to advancements in other departments made during the year. III. R. 956, 983.

The circumstantial evidence offered to show that defendant Johnson was the sole owner of the gambling houses listed, and that the operators were mere employees of Johnson, consisted of testimony that Johnson frequently visited some of these places, that he talked with the persons who were in charge, that he exercised influence in the employment of some of the employees, that one group of workmen did carpenter and other construction work at several of the gambling houses, that bus service was provided by the same company to some of the places, that one drayman moved a few tables and chairs from one house to another, that the same accountants served Johnson and some of the other defendants in preparation of their income tax returns during part of the period, and that large quantities of \$100 bills were taken by the operators of these gambling houses in cashing checks and exchanging currency and that Johnson used \$100 bills in paying in part the purchase price of and for construction work on properties owned by him and in which he was interested, and other similar and related circumstances. Briefly, this testimony was as follows:

Sixteen Government witnesses,—Schumacker (II. R. 177-178), Cieslik (II. R. 222), Didier (II. R. 225), Greenberg

(II. R. 233), Cusack (II. R. 249), Weeks (II. R. 276), Kehoe (II. R. 309), Coote (II. R. 315), Lang (II. R. 319), Lebbin (II. R. 322), Meyer (II. R. 328), Leonard (II. R. 339), Ehrlich (II. R. 347), Cobb (II. R. 351-352), Wolfson (II. R. 387), and Singer (II. R. 396-397),—testified that they solicited Johnson to assist them in getting employment in gambling houses and some of them stated that Johnson helped them get jobs. All but four of these men admitted that Johnson merely recommended them for employment and that they were employed by and worked for the respective operators of these gambling houses. Only Schumaacker, Didier, Kehoe and Cobb stated the conclusion that Johnson actually directed someone to put them to work. Johnson admitted that he had been frequently solicited to aid unemployed men to get work and that he had in many instances been able to help men get employment at gambling houses, but he denied that he employed anyone to work in any of the gambling houses or that he assumed authority to get anyone to employ them. III. R. 952-954.

Four Government witnesses,—Anderson (II. R. 128-131), McGinnis (II. R. 135), Schultz (II. R. 235-240), and Schmidt (II. R. 336-337),—testified that they performed certain skilled labor at various gambling houses. All of these men testified that they were employed by Roy Love who was their boss. (II. R. 128, 134-135, 235, 336.) There is no evidence that any of these men received any directions from Johnson respecting their work in the gambling houses. Baker (II. R. 132-134) and Jones (II. R. 139) testified that they were employed as porters at gambling houses, and Corbin (II. R. 388-390), Bellamy (II. R. 250), Harvey (II. R. 262) and Kudesh (II. R. 381-382) testified that they were employed as drivers to drive patrons from gambling houses that had been closed to gambling houses which were in operation, and Thibert (II. R. 306-308) testified that he furnished bus service under similar circum-

stances, and Jungwirth (II. R. 265-266, 270-271) testified that he transferred furniture from one gambling house to another, and Hollander (II. R. 272) testified about storage and transfer service furnished certain of the gambling house operators. Not one of these witnesses testified that Johnson had anything to do with arranging for their employment or with directing them with respect to service rendered or with paying for the service.

Six Government witnesses,—Schumacker (II. R. 178), Cusack (II. R. 248), Ellis (II. R. 280), Lynch (II. R. 281), Hayes (II. R. 298), and Ogren (II. R. 329),—testified that they worked as sheet writers in many "horse books" enumerated by them, and they described in detail the manner in which bets on horses were made and recorded and paid in these places. Twenty-eight Government witnesses,—Anderson (II. R. 130), Cregar (II. R. 136), Cobb (II. R. 355), McGinnis (II. R. 135), Cieslik (II. R. 222), Greenberg (II. R. 233), Schultz (II. R. 240), Bingen (II. R. 254), Canfield (II. R. 256), Arndt (II. R. 263), Ellis (II. R. 279), Hayes (II. R. 293), Coote (II. R. 315), Fahy (II. R. 316), Harvan (II. R. 318), Lebbin (II. R. 322), Luria (II. R. 324), Masury (II. R. 327), Meyer (II. R. 328), Smith (II. R. 338), Leonard (II. R. 339), O'Leary (II. R. 342), Ehrlich (II. R. 346), Kudesh (II. R. 382), Penner (II. R. 383), Wolfson (II. R. 387), Brown (II. R. 396), and Singer (II. R. 397),—testified that they were employed as shills at various gambling houses at the different side games and many of them described in detail the playing of the gambling games where they worked and the work of a shill in keeping the games in operation with the owner's money until patrons came to gamble. None of these witnesses testified that Johnson fixed their hours or pay or duties.

Twenty-four Government witnesses,—Brenner (II. R. 383), Corbin (II. R. 388), Greenwald (II. R. 391), Cregar

(II. R. 135), Jones (II. R. 139), McGlynn (II. R. 192), Bonfield (II. R. 247), Bellamy (II. R. 250), Brown (II. R. 396), Cargett (II. R. 253), Bingen (II. R. 254), Canfield (II. R. 256), Harvey (II. R. 262), Arndt (II. R. 263), Ellis (II. R. 279), Lynch (II. R. 281), Fahy (II. R. 316), Harvan (II. R. 317), Luria (II. R. 324), Ogren (II. R. 329), Rowlett (II. R. 333), Smith (II. R. 337), O'Leary (II. R. 342), and Koenig (II. R. 373),—testified that they were employees in various gambling establishments and gave details of their employment, but did not mention Johnson's name and did not say that they had ever seen him or had ever had any contact with him.

There was no proof of defendant Johnson's connection with any of the telephone services or transactions. Two telephone men,—Acheson and Moore,—testified in great detail about installations and changes in telephone service from the service bureau at 2135 South Crawford (now Pulaski) and later from the service bureau at Irving Park and Milwaukee to various gambling houses. (II. R. 195-205, 208-215, 697-704.) Flanagan testified that the installations and changes in telephone service were made at his direction and at his expense. (III. R. 935.) Sommers and Creighton testified that they made their arrangements for telephone service with Flanagan. (III. R. 845, 860.) Flanagan testified that he was the sole owner of the service bureau and that neither Johnson nor any other defendant had any knowledge of his inauguration of the racing information service or of the customers he was serving from time to time, except as some co-defendant was a customer, and that neither Johnson nor any other defendant had any interest at any time in the service bureau. (III. R. 932.) Johnson testified that he had no connection with the establishment of the service bureau, no investment in it, no income from it, and no transactions concerning it. (III. R. 951.) Acheson testified that

he had no dealings with defendant Johnson in connection with this telephone service, (II. R. 205,) and Moore did not mention Johnson.

Five volumes, each recording 1,000 or more customers' accounts with the Nationwide News Service between 1934 and 1938, (Gov. Ex. O-11 to O-15) which were received in evidence, (II. R. 167,) showed no account identified with defendant Johnson. A former bookkeeper for Nationwide identified the books and said they showed transactions between Nationwide and its customers, (II. R. 148,) but he did not identify any of the accounts with a defendant on trial. Another former employee testified that defendant Johnson did not have an account with Nationwide. (II. R. 161.) He testified that there was a conversation between him and one Ragen and Flanagan at the Nationwide offices in 1938 relating to the rate charged Flanagan for his service. (II. R. 153.) He said there might have been a second conversation with Flanagan about a week later but that he could not recall because he had very little to do with the Flanagan account after the first conversation. The Court then permitted the prosecutor to cross-examine his own witness and in response to a leading question he stated that he believed there was a third conversation where defendant Johnson was present. He could not recall whether Johnson was present and stated that he did not think he was. (II. R. 154.) It was in his statement to Stains, and not in his testimony at the trial, that the witness stated that Johnson argued that the rates should be lower because customers were drawn into the places under discussion by other gambling games. (II. R. 157.) On cross-examination he stated that Flanagan was a subscriber of Nationwide News Service and that his account had been on the Nationwide books at least ten years and that his dealings were always with Flanagan. (II. R. 161.) Later, on cross-examination, he stated that Johnson was not pres-

ent when the conversation between Ragen and Flanagan took place at the Nationwide offices. (II. R. 164.) When cross-examined about his statement to Stains he said he had never told anybody that defendant Johnson had any conversation with him about the Flanagan account until he made his statement to Stains, when he was interviewed a few days before he went on the stand. (II. R. 165.) Johnson testified that he had no interest in the charges that were being made to Flanagan and he denied that he undertook to adjust a dispute between Flanagan and Nationwide. (III. R. 952.) Flanagan testified that he had many controversies over the charges that were being made for services furnished to him and that he frequently visited the Nationwide offices but that Johnson was never there with him and had no interest in the matter. III. R. 937-938.

There was no evidence connecting Johnson with any of the numerous banking and currency exchange transactions of his co-defendants. Tellers of the Northern Trust Company testified that around 1934 Sommers began transacting business with the bank, that thereafter he came in frequently to cash checks, (II. R. 503, 507,) and that occasionally he brought in worn currency and exchanged it for new 5's, 10's and 20's and a few larger bills. (II. R. 504, 508.) There is no proof of the *amount* of currency exchanged, but a "special paying teller testified that he exchanged currency for Sommers approximately eighteen times a year during 1936, 1937, 1938 and the first half of 1939; that Sommers would bring old \$5, \$10 and \$20 bills amounting to around \$5,000 and would take out about \$3,000 in new 5's and about \$2,000 in new 20's and that sometimes he would take \$100 bills instead of 20's. (II. R. 604.) No record of these transactions was kept by the bank, but it was estimated that they aggregated about \$100,000 a year. (II. R. 605.) On cross-examination the teller stated that he did not know whether the same \$5,000 bank roll was

handled eighteen times a year or whether there were eighteen \$5,000 bank rolls involved each year. (II. R. 605.) The Northern Trust Company tired of giving Sommers free service and around June 1936 he made arrangements to cash his checks at the Albany Park Currency Exchange at the rate of 25¢ a \$100. (II. R. 476.) The manager testified that the checks on his records designated by the initials "J. S." were those of Sommers and that the checks designated by the initials "M.D." were those cashed by one Downey who was introduced to him by Sommers. (II. R. 480-484.) He kept no record of the amount of new currency exchanged for old, but he said that most of the cash deposits shown by his deposit slips at the Milwaukee Avenue National Bank represented currency exchanged for Sommers. (II. R. 485-487, 492.) Downey brought in checks in a package marked "L. T." which Marcus thought meant "Lincoln Tavern," and in a package marked "D.D." which he thought meant "Division and Dearborn." (II. R. 493.) Lincoln Tavern, which was in the country northwest of Chicago, was operated by Hartigan, and the D. & D. Club was operated by Kelly in a building at Division and Dearborn. Around July 1938 Semmers, Hartigan and Kelly transferred their business from the Albany Park Currency Exchange to the Lawrence Avenue Currency Exchange, operated by co-defendant Brown. This exchange first got its service at the North Shore National Bank and between July 21, 1938, and August 16, 1938, the bank furnished the exchange approximately \$85,000 in currency, most of which was in \$100 bills. (III. R. 606.) Thereafter the exchange did its business with the Central National Bank and a special teller testified that the exchange placed orders for between \$3,000 and \$5,000 in currency nearly every day between July 1938 and September 1939. The currency order was for various denominations, from \$100 bills to singles. (III. R. 611.) An accountant testified that he set up a bookkeeping system for the Lawrence Avenue Cur-

rency Exchange and that there was one account called "Reserve for Uncollected Funds" to which were credited all checks presented on which cash was not paid out immediately. (III. R. 535.) During the fifteen months the exchange operated the total turn-over of currency amounted to \$2,600,000, of which about \$1,100,000 passed through the "Reserve for Uncollected Funds" account. The accountant said Brown referred to this account as the "Johnson Account" but no given name was mentioned and that he did not know what Johnson Brown was talking about. (III. R. 542.) Creighton did his business with the Mid-City National Bank. (III. R. 516.) A Government agent spent about five weeks examining with a magnifying projector the Recordak films which recorded the checks cashed over the counter by the bank, and then testified on the trial to the total amount of checks which he found from this examination bore the endorsement of Creighton. (III. R. 714-726.) Flanagan cashed checks and exchanged currency at the Lawndale Currency Exchange. The manager had no idea how much the transactions totalled. (III. R. 552-559.) *There was no proof of the amount of money actually involved in all of these transactions and no proof that defendant Johnson had any connection with any of the transactions or received a dollar of the money.*

Two accountants testified respecting the preparation of income tax returns for defendants. Brantman prepared returns for defendant Johnson from 1925 to 1935, (II. R. 419,) and Radomski prepared them for 1936 and thereafter. (II. R. 101.) Brantman prepared returns for other defendants and for many other gamblers and he suggested the phrase "Miscellaneous Speculative Income" as an appropriate description of the source of income. (II. R. 437-453.) He admitted that he was making returns for 300 or 350 persons each year. (II. R. 446.) After an over-night recess Brantman testified, on further examination with respect to the meeting at the Horse-Shoe Club in 1932, that

Johnson, in introducing Sommers, said, "Meet my man Sommers," (II. R. 429,) but on cross-examination he admitted that just preceding the trial he had had about six conferences with the prosecuting attorneys and altogether he was interviewed twelve or fifteen times over the period of the year of the investigation of this defendant (II. R. 436); that he could not remember with any accuracy when conversations took place or what was said (II. R. 435); that Barnes was running the Horse-Shoe Club at the time of these conversations and he had been making out returns for Barnes and that it might have been Barnes, not Johnson, who introduced him to Sommers. (II. R. 440.) Brantman attached no significance to his suggestion to Johnson to advise other gamblers that they should file returns. He knew Johnson had friends all over town and he thought he was doing a friendly act when he suggested that Johnson warn his friends, because he knew there was a change of policy in Washington regarding returns of those engaged in illegal pursuits. (II. R. 438.) He had no occasion to be warning Johnson because Johnson had been filing returns for more than ten years. Brantman denied on cross-examination that it had been suggested to him in the many conversations he had with the prosecutors and agents that his license to practice before the Department of Internal Revenue was in jeopardy if he did not testify to suit the prosecution, but he admitted that they told him that as a man admitted to practice before the Treasury Department he was looked upon as the equivalent of a Government representative and should conduct himself accordingly. II. R. 453.

The foregoing is a summary of the principal evidence relating to the question of Johnson's ownership of a group of gambling houses and to the question of the amount of Johnson's income under the theory that he owned these places.

Evidence Under Second Theory.

The Government also attempted to show that Johnson's taxable income exceeded his reported income by some undetermined amount, by the indirect method of proving cash expenditures which it claimed he made.

For the years 1932 to 1935, the period immediately preceding the period covered by the indictment, the total expenditures, as computed by the Government, were as follows: (III. R. 766)

1932

- | | |
|---|-------------|
| 1. Federal income taxes | \$ 8,841.11 |
| 2. Payments relative to Lincoln Park Building | 7,000.00 |

1933

- | | |
|---|-----------|
| 3. Federal income taxes | 8,610.10 |
| 4. Payments relative to Lincoln Park Building | 38,000.00 |

1934

- | | |
|---|-----------|
| 5. Federal income taxes and penalty | 27,993.00 |
| 6. Payments relative to Lincoln Park Building | 65,311.93 |
| 7. Furnishings Thorndale-Glenwood Bldg..... | 730.22 |

1935

- | | |
|---|-----------|
| 8. Federal income taxes | 41,373.56 |
| 9. Payments relative to Lincoln Park Building | 80,513.72 |
| 10. Furnishings Thorndale-Glenwood Bldg. | 326.00 |

Total for four-year period278,699.64

The following amounts represent corrections of the Government's figures as the result of defense testimony:

1932

- | | |
|--|----------|
| Deduct from Lincoln Park Building payments,
credit shown by Gov. Ex. E-9 (III. R. 992)..... | 2,250.00 |
|--|----------|

Add interest paid on prior Federal taxes (II. R. 6)	117.56
Add payment on 4020 Ogden mortgage (III. R. 990)	500.00

1933

Deduct from Lincoln Park Building payment discount on purchase of second mortgage notes (III. R. 957)	8,000.00
Add purchase of U. S. Bonds (III. R. 992)	5,000.00
Add payment on 4020 Ogden mortgage (III. R. 990)	8,500.00
Add payment on 2141 Pulaski mortgage (III. R. 990)	5,000.00

1934

Deduct from Lincoln Park Building payments, excess of estimate of cost of equity (III. R. 956)	8,500.00
Net adjustment increases expenditures	367.56
Making total expenditures for four years.....	\$279,067.20

For the year 1936 the total expenditures as computed by the Government were:

1. Federal income taxes (II. R. 7)	20,062.18
2. Payments re Lincoln Park Bldg. (Gov. Ex. R-10)	54,634.29
3. Furnishings Thorndale-Glenwood Bldg. (Gov. Ex. R-10)	124.00
4. Payments re The Dells (II. R. 59)	10,000.00

Total	\$84,820.47
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As to item 4, William Goldstein, who holds an attorney's license, testified for the Government that on November 22, 1936, he executed the escrow agreement contained in Government's Exhibit E-35, that the \$10.000 which he deposited

with Chicago Title and Trust Company was received from Johnson in the form of currency and that the property was purchased at Johnson's request. (II. R. 59.) On cross-examination Goldstein identified defendants' Exhibit J-3 as in W. R. Skidmore's handwriting, but refused to admit it was a statement of account respecting the purchase of The Dells. (II. R. 66.) He admitted that the "Herman" named on the exhibit was the attorney that represented the seller. He presumed that the Goldstein mentioned, who got \$750 out of this deal, was himself. (II. R. 67.) Defendant Johnson testified that he made no arrangements with Goldstein to purchase this property in 1936 or at any other time, but he joined Skidmore in the purchase of the property in 1937. Defendants' Exhibit J-3 is in the handwriting of Skidmore and is a memorandum of cost given to him by Skidmore at the time of the settlement. He first paid Skidmore \$10,000 and later paid him a balance of \$1,057.95. (III. R. 955.) In addition to the memorandum in Skidmore's handwriting (Def. Ex. J-3) and the two escrow agreements (Gov. Ex. E-35 and E-36), Johnson's testimony was corroborated by the testimony of lawyer Herman who testified that he represented the owners of The Dells in connection with the sale in 1936, that he talked with Goldstein and Skidmore at the latter's home, that he advised Skidmore that the price was \$10,000 plus a fee for himself, that Skidmore said that was all right and asked Goldstein whether he wanted the cash then, that Goldstein suggested he deliver it to the Chicago Title and Trust Company the next day, that he and Goldstein entered into the escrow agreement, and that under the agreement Goldstein deposited the money and he deposited the deeds. (III. R. 926-927.) Herman testified that he never saw Johnson in connection with this transaction and that he did not know him then. (III. R. 927.) Item No. 4 should not be included in the 1936 expenditures. This leaves \$74,820.47 as the total of expenditures for 1936.

For the year 1937 the total expenditures as computed by the Government were: (III. R. 764)

1. Federal income taxes	\$ 78,550.70
2. Payments re Lincoln Park Building	16,274.00
3. Furnishings Thorndale-Glenwood Bldg.	102.75
4. Payments re The Dells	9,000.00
5. Payments re 9730 S. Western Ave.	35,515.00
6. Payments re Sunny Acres farm	266,511.14
7. Purchase of Albany Park Bank Bldg.	59,887.05
Total	\$465,840.64

The following amounts represent corrections of the Government's figures as the result of defense testimony:

4. Add to payment re The Dells (III. R. 955, 993)	\$ 2,057.95
5. Deduct from payments re 9730 S. Western Ave. (III. R. 955, 993) ..	17,757.50
6. Deduct stock farm overcharge (III. R. 993)....	4,908.30
7. Deduct purchase of Bank Building (III. R. 955, 992)	59,887.05
8. Add interest paid on added income tax.....	1,280.02
Net adjustment decrease expenditures	\$ 79,214.88
Making total expenditures for 1937	\$386,625.76

As explained above, the total cost of The Dells property was \$22,115.90, and Johnson paid one-half of this in 1937. (III. R. 955.) Herman represented the seller in the two transactions and Goldstein represented the purchaser and paid the purchase price. III. R. 927.

Item 5, the payments relative to 9730 South Western Avenue, is based largely on the direct examination of Goldstein. He testified that he deposited the amounts of

the escrow agreements for the purchase of the lots, that he received the money from defendant Johnson and purchased the property at his request, and that the title was taken in the names of office associates who quitclaimed to Johnson. Goldstein testified on direct examination that he personally delivered these deeds to Johnson. (II. R. 56.) On cross-examination, when confronted with the deeds, Goldstein was forced to admit that Johnson got title to only an undivided one-half interest, (II. R. 64,) and that Skidmore was the owner of the other half interest. (II. R. 65.) The Government accountant ignored this testimony of Goldstein brought out on cross-examination. (III. R. 746.) Nadherny, an architect, testified that the total cost of the building at 9730 South Western Avenue was \$22,400, and that Skidmore furnished the money. (II. R. 79.) The Government accountant ignored this testimony and charged the total to Johnson. (III. R. 746.) Johnson testified that he owned one-half of the property and that he contributed about \$17,500 to the purchase of the land and the construction of the building. (III. R. 955.) Mrs. Homan testified that from January, 1927 to January, 1938 she was receptionist and general stenographer for William Goldstein and she identified Government's Exhibits E-69 and E-70 (deeds marked for identification as defendants' Ex. J-1 and J-2) as deeds which she signed at the request of William Goldstein. She testified that she did not know the grantee, William R. Johnson, when she made the deeds, and did not remember ever seeing him until the day she testified. She knew William R. Skidmore, who came into Goldstein's office on several occasions during the period she was working there. (III. R. 922.) The figure in Item 5 should be \$17,757.50,—half of the total cost which was paid by defendant Johnson.

As to the payments relative to Sunny Acres Stock Farm, the \$4,908.30 deducted represents an unlocated difference

between the computation of the defendants' and the Government's accountants. (III. R. 993.) There was no rebuttal of the testimony of the defendants' accountant as to what the farm account books showed.

As to the purchase of the Albany Park Bank building, Goldstein testified that he purchased the property at the request of Johnson for \$59,887.05, that he took title in the name of Ted W. Goldstein, his son, and that subsequently there was a quitclaim deed delivered to Johnson by his son. (II. R. 57.) Johnson testified that he does not own the Albany Park Bank building or any part of it, that he did not employ Goldstein to buy the property for him, that he never gave him any money to make the purchase, that no deed was ever delivered to him, and that he knows nothing about the ownership of this property. (III. R. 955.) The title is still in Ted Goldstein and William Goldstein manages the building and collects the rents (III. R. 590, 599, 601) and presumably accounts to the owner. He has never accounted to Johnson. This item should be deducted.

For the year 1938 the total expenditures as computed by the Government were: (III. R. 764)

1. Federal income taxes	\$128,399.72
2. Payments re Lincoln Park Bldg.	3,680.09
3. Furnishings Thorndale-Glenwood Bldg.	106.09
4. Payments re Sunny Acres stock farm	15,377.76
5. Payments re Bon-Air Country Club and Bon-Air Catering Company	368,997.66
6. Loan to Skidmore	37,000.00
Total	\$553,561.32

The following amounts represent corrections of the Government's figures as the result of defense testimony:

4. Add unlocated difference re Sunny Acres (III. R. 993)	597.55
5. Deduct half of payments re Bon-Air (III. R. 957)	184,498.83
6. Deduct Skidmore loan (III. R. 993)	37,000.00
Net adjustment decreases expenditures.....	\$220,901.28
Making total for 1938	\$332,660.04

Item 5 represents expenditures relative to the Bon-Air property. (III. R. 764.) These expenditures during 1938, and many more during 1939, were included in the Government's estimate of Johnson's expenditures on the theory that Johnson was the *sole* owner of the Bon-Air Country Club and the Bon-Air Catering Company.

Johnson testified that he owned only half of the Bon-Air Country Club and that William R. Skidmore owned the other half, and that he and Skidmore owned in equal shares 55% of the Bon-Air Catering Company, and that each contributed equally to the expenditures at Bon-Air. (III. R. 956.) Becker, a witness for the Government, testified that the original \$75,000 payment was made by Goldstein (III. R. 574), that Goldstein negotiated the deal and wrote a letter to Becker (Defendants' Exhibit J-6) which stated he was representing "clients." (Note the plural.) Becker had no contact or dealings with any other person than Goldstein. (III. R. 575.) Bibow, an agent for the seller, said Goldstein told him that before the deal could be closed he would have to see "a couple of other people." (III. R. 576.) Goodsell, an accountant, testified that in the fall of 1939 Johnson instructed him to take certain construction and equipment items pertaining to buildings and grounds off the books of the catering company. (II. R. 54.) Johnson testified that these items represented advancements made

by him and Skidmore for fixed improvements in 1938 and that they were entered on the catering company books by mistake. (III. R. 964.) Johnson testified that he did not arrange with Goldstein in September, 1937, or at any other time, to negotiate for the purchase of the property, and that he never gave Goldstein any money at any time to pay for the property. (III. R. 955.) He said he learned about the purchase in the latter part of December, 1937, when Skidmore told him and Wait that he had purchased Bon-Air. Johnson joined Skidmore in the purchase and he and Skidmore contributed equally to the purchase price of the property and to the payment of the expenditures for improvements and operation. (III. R. 956.) Goldstein took title to the real estate in Johnson's name and recorded the deeds before he delivered them to Johnson and Johnson delivered to Goldstein quitclaim deeds conveying a half interest to Skidmore. (III. R. 963-964.) Johnson identified defendants' Exhibits J-11 and J-12 as certificates of title to trucks owned by the Bon-Air Country Club which bear the signature of William R. Skidmore. (III. R. 956.) Since the Curran farm was acquired as a part of Bon-Air, Skidmore has operated it. III. R. 960.

Johnson is strongly corroborated. Wait testified that he learned that the club had been acquired by Skidmore some time in the middle of December, 1937, that he became the manager in 1938 for Skidmore and Johnson, that during the operation of the club Johnson would be there nearly every day and night for two or three hours and Skidmore would be there a couple of times a week, and that he got the money to pay the bills from Johnson and Skidmore, who were supposed to contribute half and half, but he didn't know exactly the amounts contributed by each. (III. R. 896-898.) Nadherny, the architect, testified that part of his fees was paid by Skidmore and part by Johnson. (II. R. 81.) Joseph Spagat testified that in April, 1938, he began work

at Bon-Air as catering manager and that both Johnson and Skidmore participated in the operation and management of the Club. (III. R. 893-894.) Samuel Hare testified that in the early part of 1937, as agent for Skidmore, he had some negotiations with the agent for the bondholders with respect to the purchase of Bon-Air. (III. R. 914.) Later he took William Goldstein to Becker to discuss the deal and Goldstein said that if the bondholders made up their minds to take \$60,000 he would put the money up in escrow. Hare had no further part in the negotiations. (III. R. 915.) Rex Davis, the painting contractor, testified that during his work there he saw Skidmore around the premises two or three times a week inspecting the construction that was going on, and that he had a conversation with Skidmore and Johnson and Wait about their family name shields that were placed in the bar at Bon-Air. During the three months he was working at Bon-Air he saw Skidmore talk with Johnson, Wait and Nadherny. (III. R. 916.) Robert Goldberg, who did the electrical work at Bon-Air in 1938 and 1939, testified that he saw Skidmore there on numerous occasions and had conversations with him pertaining to the work he was doing there. On one occasion Wait gave him \$2,500, which was part of \$5,000 that Skidmore gave Wait in his presence on the roof of the club. (III. R. 916-917.) William R. Thele, formerly vice-president of Durand-McNeil-Horner Company, wholesale grocers, testified that his concern did business with Bon-Air Catering Company beginning in May, 1938, and he identified defendants' Exhibit J-7(a-e), (five ledger sheets of Durand-McNeil-Horner Company headed, "Skidmore and Johnson, Bon-Air Country Club, Wheeling, Illinois"), as records kept in the regular course of business. (III. R. 919-920.) Albert Tatge, who formerly owned the property known as the "Greenhouse" at Bon-Air, testified that when he sold the house there was a pool table in the basement which Skidmore bought and told him to leave. (III. R. 922.)

Fred Boeye, the greens keeper, testified that his duties kept him out on the grounds, but he would see Skidmore on the grounds occasionally when he was around the buildings. The grass seed that was used on the club property was delivered by Skidmore's Lawndale Scrap Iron Company trucks and he saw the same trucks haul corn from the Curran farm, which was part of Bon-Air. Skidmore's farm manager got gasoline at Bon-Air to operate Skidmore's trucks, which bore the name "Pine Tree Farms," and his tractors. His crew hauled some peat moss from Skidmore's farm to the club at the direction of Skidmore. In 1938 Pine Tree Farms' trucks hauled about 250 yards of sand to the club's golf course. (III. R. 925.) Sam Rose, employed at the Bon-Air Country Club during the seasons of 1938, 1939 and 1940 as dance producer and director of shows, testified that he consulted with Skidmore and Johnson relative to the shows which he produced and the price of the acts. (III. R. 923.) Fred Meyer testified that while he was doing cement work at Bon Air he used to see Skidmore around the place once in a while and that in the fall of 1937 he was sent down to The Dells to help tear down some old buildings, and that the salvaged lumber was loaded onto Pine Tree Farms trucks. (III. R. 928.) Earl R. Allan testified that he is in the sales department of the Sinclair Refining Company and that the group of defendants' Exhibits J-9(a) to J-9(bbb), (invoices of Sinclair Refining Company headed "Bon-Air Country Club, W. R. Skidmore, Wheeling, Illinois"), were delivery tickets prepared by the driver at the time of delivery (III. R. 929), and that purchases for Bon-Air were under the same quantity discount contract as for Skidmore's Pine Tree Farms and the Lawndale Scrap Iron Company. III. R. 930.

On this uncontradicted evidence of Skidmore's interest in Bon-Air, this defendant bases his contention that only one-half of the Bon-Air expenditures should be charged to him.

The loan to Skidmore which was outstanding at the time of defendant Johnson's statement to the Revenue Agents on March 27, 1939 (II. R. 411), should be deducted from the 1938 expenditures because the loan was not made until 1939 and was paid the same year. III. R. 957, 993.

For the year 1939 the total expenditures as computed by the Government were: (III. R. 764)

1. Federal income taxes.....	\$ 34,530.94
2. Payments re Lincoln Park Bldg.	2,356.27
3. Payments re Sunny Acres	1,087.04
4. Payments re Bon-Air	291,955.07
5. Expenditures re Columbian Gardens	17,500.00
Total	\$347,469.32

The following amounts represent corrections of the Government's figures as the result of defense testimony:

3. Add to farm expenditures (III. R. 993).....	17,609.70
4. Deduct from payments re Bon-Air (III. R. 957).....	122,671.40
5. Deduct expenditures re Columbian Gardens lots (III. R. 957, 993).....	17,500.00
Net adjustments decrease expenditures.....	\$122,561.70
Making total expenditures for 1939.....	\$224,907.62

The additions to farm expenditures represent the purchase or construction of items capitalized, purchase of stock cattle, etc., and personal items paid. (III. R. 993.) After Johnson moved to his farm in 1937, his living expenses were reflected in his farm accounts.

Expenditures relative to Bon-Air Country Club and Bon-Air Catering Company are based on the books of Bon-Air Catering Company, and the testimony of the following witnesses who testified that they or the company which they

represented supplied services, material and labor at Bon-Air and were paid therefor: Nadherny (II. R. 84), Yaseen (II. R. 90), Anderson (II. R. 92), Wendt (II. R. 122-124), Goldberg (II. R. 140), Davis (II. R. 142), Kerr (II. R. 143), Fisher (II. R. 144), Paulson (II. R. 145), Star (II. R. 168), Reedy (II. R. 170), Cervenka (II. R. 228), Kling (II. R. 230), Boras (II. R. 231), Alguire (II. R. 259), deBettencourt (II. R. 232), Huffman (II. R. 259), Huston (II. R. 260), Leichsenring (II. R. 261), Schafer (II. R. 274), Hardin (II. R. 308), Nechin (II. R. 313), Wheeler (II. R. 45, 392). Nadherny only, of these witnesses, testified he was paid by Johnson. The only proof that Johnson made any of these expenditures, except the few payments to which Nadherny testified, is his own testimony that he made half of all that were made at Bon-Air.

To Government's Item 4 should be added \$69,007.27, which represents additional expenditures, to bring the total to the amount of \$730,000, which Johnson testified was the approximate total cost. From the same item should be deducted \$22,355, which was profit from gambling paid to Skidmore and Johnson as partial reimbursement for advancements made to the catering company. From this net should be deducted \$169,323.67, representing one-half of the total net advances which were made by Skidmore. II. R. 957.

As to the Columbian Gardens purchase, William Goldstein testified that he deposited \$10,000 in currency with the Chicago Title & Trust Company in connection with the purchase of land adjoining the Curran farm and \$7,500 with the State Bank & Trust Company in connection with the purchase of other lots in the same vicinity, and that he received the money from Johnson and made the deposits at his request. (II. R. 60-61.) The contracts show Goldstein was the purchaser. Goldstein indicated to Bibow of the State Bank that "a couple of other people" were in-

terested as purchasers. (III. R. 576.) Johnson testified that he did not furnish Goldstein with the \$17,500 deposited, that he did not authorize Goldstein to purchase these parcels of land, that he knew nothing about the contracts of purchase, and did not know to what lands they referred. III. R. 957.

This concludes the explanation of the adjustments as to expenditures.

Cash Accumulations.

In computing defendant Johnson's total available cash for the purpose of comparing it with his expenditures, the Government used January 1, 1932, as a starting point. Government Agent Wilson testified that on January 26, 1934, he asked defendant Johnson how much cash he had on December 31, 1931, and that Johnson said he had his bankroll of \$10,000 and \$68,000 in accumulated gambling profits in a safety deposit box. (II. R. 10.) Johnson explained that during the course of that conversation with Agent Wilson an item of \$78,000 plus, which appeared on his 1931 return as gambling gain, was discussed and that in reply to Wilson's inquiry as to what he did with that money he told Wilson that he carried about \$10,000 of it as his bankroll and that the rest was put in his box. Johnson testified that he did not tell Wilson that the \$68,000 he said he put in his box was the only cash that was in the box, and that it was not the only cash he had there at that time. He estimated he had between \$140,000 and \$150,000 in his box at the end of 1931, in addition to the \$68,000 he added that year. (III. R. 960.) He had reported large income for ten years before 1931 and had accumulated cash.

Johnson's accumulations of cash from year to year after 1931 as shown by the evidence were:

1932

Total reported net cash income (Gov. Ex.

R-6) \$ 74,553.85

1933

Total reported net cash income (Gov. Ex. R-7)	80,079.85
Collection on Judd mortgage (III. R. 960).....	83.51
Collection on Horner mortgage (III. R. 960)	2,000.00

1934

Total reported net cash income (Gov. Ex. R-8)	142,125.43
Non-taxable interest on U. S. Government securities	162.50
Collection on Judd mortgage (III. R. 960).....	515.91
Collection on Horner mortgage (III. R. 960)	2,000.00
Collection on Joint Stock Land Bank bonds (III. R. 960).....	1,500.00

1935

Total reported net cash income (Gov. Ex. R-9)	\$ 68,211.14
Non-taxable interest on U. S. Government securities	162.50
Collection on Judd mortgage (III. R. 960).....	1,576.18
Collection on Horner mortgage (III. R. 960)	2,000.00
Collection on Joint Stock Land Bank bonds (III. R. 960).....	1,500.00

Total for the four-year period .. \$376,470.87

1936

Total reported net cash income (Gov. Ex. R-10)	\$173,220.40
Non-taxable interest on U. S. Government securities	162.50
Collection on Judd mortgage (III. R. 960).....	4,966.37
Collection on Horner mortgage (III. R. 960)	2,000.00
Collection on Joint Stock Land Bank bonds (III. R. 960).....	500.00

Total .. \$180,849.27

1937

Total reported net cash income (Gov. Ex. R-11)	\$264,015.13
Non-taxable interest on U. S. Government securities	162.50
Collection on Judd mortgage (III. R. 960).....	3,448.71
Collection on Horner mortgage (III. R. 960)	2,000.00
Collection on Joint Stock Land Bank bonds (III. R. 960)	125.00
Total	\$269,751.34

1938

Total reported net cash income (Gov. Ex. R-12)	\$120,975.15
Non-taxable interest on U. S. Government securities	162.50
Collection on Judd mortgage (III. R. 960).....	8,331.10
Collection on Horner mortgage (III. R. 966)	2,000.00
Collection on Joint Stock Land Bank bonds (III. R. 960)	125.00
Total	\$131,643.75

1939

Total reported net cash income (Gov. Ex. R-13)	\$268,885.98
Non-taxable interest on U. S. Government securities	162.50
Collection on Judd mortgage (III. R. 960).....	1,028.22
Collection on Joint Stock Land Bank bonds (III. R. 960).....	150.00
Total	\$270,226.70

Cash Available and Expenditures.

Therefore, assuming Johnson had \$218,000 at the beginning of 1932, as he estimated, and that he had no other cash accumulations than those proved, and allowing an amount of \$10,000 a year to cover living expenses, above the personal expenses shown by his farm accounts, Johnson had (III. R. 994) for the period 1932 to 1935, inclusive:

Total net cash available.....	\$594,470.87
Total cash expenditures.....	319,067.20

Balance of available cash at end of 1935.....	\$275,403.67
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1936

Available cash at beginning of year.....	\$275,403.67
Net available cash receipts.....	180,849.27

Total available cash.....	\$456,252.94
Total cash expenditures.....	84,820.47

Balance of available cash at end of 1936.....	\$371,432.47
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1937

Available cash at beginning of year.....	\$371,432.47
Net available cash receipts.....	\$269,751.34

Total available cash.....	\$641,183.81
Total cash expenditures.....	\$396,625.76

Balance of available cash at end of 1937.....	\$244,558.05
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1938

Available cash at beginning of year.....	\$244,558.05
Net available cash receipts.....	131,643.75

Total available cash.....	\$376,201.80
Total cash expenditures.....	342,660.04

Balance of cash available at end of 1938.....	\$ 33,541.76
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1939

Available cash at beginning of year.....	\$ 33,541.76
Net available cash receipts.....	270,226.70
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Total available cash.....	\$303,768.46
Total cash expenditures.....	234,907.62
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Balance of available cash at end of 1939.....	\$ 68,860.84

SUMMARY OF ARGUMENT.

I.

The Circuit Court of Appeals was right in holding that the District Court erred in overruling the motion to quash. The grand jury which returned the indictment was without authority to act when the indictment was returned.

A. The order of February 28, 1940 did not conform to the only statute authorizing the continuance of the grand jury and the grand jury ceased to exist with the adjournment of the February Term. Section 221, Title 28, U. S. Code, is explicit in its requirements and is clearly designed to prohibit a grand jury from continuing to sit after the expiration of the term at which it was impanelled except to finish investigations (a) which were begun at the original term and (b) which were not finished at the original term or at a succeeding term at which the grand jury was legally authorized to sit. The order of February 28 in terms authorized the grand jury to continue to sit during the March 1940 Term, not *solely* to finish investigations begun but not finished during the December 1939 Term, but also to finish investigations begun during the February 1939 Term. This order was not in conformity with the statute and was void. The legal

existence of the grand jury terminated with the February Term of court. The body of citizens purporting to act as a grand jury at the March Term had no authority to act.

B. The December 1939 grand jury began new investigations at the March 1940 Term and as a result thereof returned counts 4 and 5 of the indictment which relate to events which did not occur until March 15, 1940. No grand jury in December 1939 or in February 1940 could anticipate that a crime would be committed on March 15, 1940 and return an indictment charging such an offense. The word "investigations" as used in Section 421, Title 28, U. S. Code, cannot be construed to broaden a grand jury's authority to include inquiry concerning offenses which may be committed in the future, or which may never be committed, as well as offenses already committed.

C. The December 1939 grand jury sitting at the February 1940 Term finished its investigation with respect to the subject matter of counts 1, 2 and 3 at the February 1940 Term and returned an indictment of three counts identical with the first three counts of the indictment herein, charging this defendant with an attempt to evade income taxes for the years 1936, 1937 and 1938. Since the grand jury had finished its investigation with respect to these matters there was no authority under Section 421, Title 28, U. S. Code, to continue the grand jury to the March 1940 Term for further investigation as to such matters.

D. The verified motion to quash alleged facts, not mere conclusions. It is specifically alleged that no investigation of the matters covered by counts 4 and 5 of the indictment was begun at the December 1939 Term and that the investigation of said matters was first begun at the March 1940 Term. It is likewise specifically alleged that the investigation of the matters covered by counts 1, 2

and 3 was finished at the February 1940 Term. The motion to quash challenged the authority of the District Judge to continue this grand jury under these circumstances. The statute limited the authority of the District Judge to continue the grand jury "solely to finish investigations begun but not finished by such grand jury." As to counts 4 and 5, the investigations were not begun at the original term, and as to counts 1, 2 and 3, the investigations were finished at the second term. There was no authority to continue the grand jury to the third term.

E. It must affirmatively appear from the record in a criminal case that every step necessary to the validity of the indictment has been taken before a valid sentence can be entered. There is no presumption that the December 1939 grand jury had authority to return an indictment at the March 1940 Term of court. Where there is a direct challenge of the authority of a grand jury to act at a term succeeding its term of organization, as there is in this case, the record must disclose facts from which it can be determined that the grand jury is a legal body acting within the limitations which Congress has definitely and plainly fixed.

II.

The demurrer to the indictment should have been sustained. There is lacking in each count of the indictment the essential jurisdictional allegation that the investigation begun at the December 1939 Term had not been finished at the February 1940 Term. Under Section 421, Title 28, U.S. Code, a grand jury may be continued *solely* to *finish* investigations *begun* but *not finished* by such grand jury. If the investigation in this case was finished at the February Term as to the matters charged in the indictment herein, or any of them, then there was no authority to continue the grand jury to the March Term

as to such matters. This challenge to the indictment goes to the jurisdiction of the District Court. There is no presumption that the December 1939 grand jury had authority to return an indictment at the March 1940 Term. The presumption is directly to the contrary. A Federal grand jury is a creature of statute and can have only the existence authorized by statute. Counts 2, 3, 4 and 5 of the indictment make no allegation of any character with respect to the organization or continuance of the December 1939 grand jury. Except where it is continued as provided by law, a grand jury has no existence beyond the term for which it was impanelled. The omission to allege in the indictment the necessary jurisdictional facts renders the indictment void.

The first four counts of the indictment are repugnant in that they allege an attempt on a day certain and then allege acts which amount to an attempt on various other days or which continued over a long period of time. The first four counts are duplicitous in that they each charge four distinct offenses,—to-wit: the offense charged by Section 145(b) which carries a maximum penalty of a \$10,000 fine and imprisonment for five years, and three offenses covered by Section 145(a) which carries a maximum penalty of a \$10,000 fine and imprisonment for one year.

III.

The evidence did not establish the guilt of defendant Johnson under any count of the indictment and a verdict of not guilty should have been directed as to each count. We assert with confidence that there is no competent evidence which supports the charge that defendant Johnson wilfully attempted to evade the payment of income taxes for any year involved, either on the theory that he owned a group of gambling houses and derived income therefrom

or on the theory that his expenditures exceeded what he had available according to his returns and his admitted assets. Under the Government's first theory the case rests on circumstantial evidence alone, and it is by mere conjecture that this defendant is made the owner of a group of gambling houses and charged in any year with an amount of income in excess of that which he reported. There is a total failure of proof that Johnson was the sole owner of the gambling houses, or of the amount of income from any gambling house mentioned, or that Johnson received a dollar of this income. There is likewise a total failure of proof under the expenditure theory that Johnson spent more money in any year involved than he had available for expenditure. The Government entirely ignores the annual periods fixed by the Internal Revenue Act for reporting of income, and it seeks to lump together the whole eight-year period covered by the returns received in evidence. The most that can be said for its proof is that in some year, not identified, Johnson did not report all of his taxable income. There was no proof of net worth in any year. Mere proof that expenditures in a particular year exceeded the amount of income reported, without proof that the taxpayer was without other resources, is not proof that the taxpayer failed to report all of his taxable income for that year. The conspiracy count rests on identically the same foundation as the substantive counts and the conviction thereon must be reversed for lack of evidence to support the charge.

IV.

This defendant was denied a fair trial. If this Honorable Court concludes that the judgment of the Circuit Court of Appeals should be affirmed on any of the grounds argued under the first three divisions of our brief, then it will be unnecessary to consider the errors on the trial. But if

this Court should conclude that there is a valid indictment and that there is some substantial evidence in the record on which the jury might reasonably have based its verdict as to some count, then we earnestly submit that the many errors committed in the admission of incompetent and immaterial evidence and by the improper cross-examination of the defendants and their witnesses denied to this defendant that fair and impartial trial which is the boast of the American system of criminal justice.

A. Agent Clifford was permitted to weight the evidence and express his conclusion on the ultimate questions to be decided by the jury. Clifford was not asked to state the amount of the financial transactions with respect to the gambling establishments for each year. He was asked to state how much income defendant Johnson received in each year. It was for the jury to decide the amount of Johnson's income in 1936, 1937, 1938 and 1939, after consideration of all the evidence. Before the jury could reach the conclusion that the banking and currency exchange transactions should be considered in determining the amount of Johnson's income, it had to decide whether there was evidence justifying the conclusion that the gambling house operators were mere employees of Johnson and that all of the money handled by them represented taxable income of Johnson. This was no problem for an accountant. The conclusion as to the amount of the taxable income of Johnson for any particular year could be determined only by considering all the facts and circumstances in evidence, and by weighing the testimony of scores of witnesses. A question which submits to an "expert" the credit to be given to the testimony of witnesses invades the province of the jury. Our objection is not to the form of the question submitted to this expert. It goes much deeper. He was asked to determine the ultimate question of the amount of taxable income received by Johnson in each of the years involved, and then to state his conclusion to the jury.

B. The evidence of the financial transactions of the co-defendants was hearsay as to Johnson and highly prejudicial. There was no proof of the total of money involved in these transactions, and yet the aggregate of the transactions furnishes the sole basis for the amount charged. There was no proof that this defendant had any connection with any of these transactions or that a dollar of the money ever reached him. We submit that the admission of this evidence must reverse the judgment.

C. The government, in its attempt to prove that Johnson was the owner of the gambling houses operated by the other defendants, introduced the testimony of scores of witnesses connected with the operation of these gambling houses. Many of these witnesses had no contact with Johnson at all and most of the others merely saw him visiting the various gambling houses. A great quantity of books and records containing prejudicial hearsay was received in evidence. In no instance was Johnson identified with these documents by direct evidence. It was prejudicial hearsay.

D. Johnson was prejudiced by a mass of evidence relating to acts of other defendants wholly unconnected with him. This included the individual income tax returns of various co-defendants, the details of the activities of the gambling house operators, the destruction of records and files in their respective gambling houses, the losses of gamblers who played in these houses, and the difficulty of the government agents in locating some of the co-defendants for interrogation about their knowledge of Johnson's affairs.

E. It is not possible to measure the damaging effect of this immaterial and improper evidence. The presumption is that it influenced the jury against the defendant. It has been held that a conviction in a criminal case should not be affirmed unless it is made to appear beyond a doubt that the improper evidence submitted did not prejudice

the rights of the accused. Even bad men are entitled to a trial on competent evidence and according to law.

F. The defendants were subjected to improper cross-examination by the prosecuting attorneys and by the Court. It was implied repeatedly that this defendant had bribed public officials for protection of himself and others engaged in operating gambling houses. The same implication was carried into questions put on the cross-examination of co-defendants. Since the prosecutor cross-examined to degrade the defendant and prejudice him with the jury, he cannot be heard to say that the cross-examination did not do what he intended it should do.

G. This defendant was prejudiced by improper rebuttal offered to impeach on immaterial matters injected into the case on cross-examination of defendants. This rebuttal testimony distracted the attention of the jury from the issues of the case. Occurring at the end of the trial, as it did, and being contradictory of matters brought out on the cross-examination of this defendant, it left the jury with a fresh impression that he had testified falsely with respect to these collateral matters, and it impaired, if it did not destroy, the effect of his testimony on matters that were material to the issues.

H. The motion for mistrial should have been granted. There was no other way open to assure defendants a fair trial after the misconduct of the prosecutors and the erroneous rulings of the court created an atmosphere of general criminality.

I. Exhibits not identified with defendant Johnson, and containing immaterial matter and highly prejudicial hearsay should not have been sent with the jury on retirement. The sending of the truckload of exhibits to the jury room was an invasion of the privacy of the jury and a denial of this defendant's constitutional right to be confronted with the witnesses against him.

ARGUMENT.

I.

The Circuit Court of Appeals was right in holding that the District Court erred in overruling the motion to quash. The grand jury which returned the indictment was without authority to act when the indictment was returned.

A. The order of February 28, 1940, did not conform to the only statute authorizing the continuance of the grand jury and the grand jury ceased to exist with the adjournment of the February Term.

The Government does not contest the proposition that a grand jury, in order to have legal authority to act at a term subsequent to the term at which it is impanelled, must have been authorized to continue to sit by an order of a district judge, in conformity with Section 421, Title 28, U. S. Code. Neither does the Government dispute the proposition that this statute empowers a district judge only to authorize a grand jury to continue to sit through a term subsequent to the term at which it is empanelled solely to finish an investigation commenced during the original term. This statute is explicit in its requirements and is clearly designed to prohibit a grand jury from continuing to sit after the expiration of the term at which it was impanelled, except to finish investigations (a) which were begun at the original term and (b) which were not finished at the original term or at a succeeding term at which the grand jury was legally authorized to sit.

The question presented here does not involve an interpretation of Section 421, Title 28, U. S. Code, since the

plain meaning of that section is conceded by the Government. The question is: Did the order of the District Judge purporting to authorize the December 1939 grand jury, which by a previous order was sitting at the February 1940 Term, to continue to sit during the March 1940 Term, conform to said statute, or did it violate the statute by purporting to authorize this December grand jury to continue to sit at the March Term to finish investigations begun at the February Term? The determination of this question turns upon the language of the order.

The order of February 28, 1940, which is the sole basis of the authority of the grand jury to continue to sit at a third term, recites that the grand jury in open court requested that an order be entered authorizing the grand jury "heretofore authorized to sit during the February 1940 Term of this Court to continue to sit during the term of court succeeding the February Term of court, to-wit: the March 1940 Term of court to finish investigations begun but not finished by said grand jury during the said December 1939 and the said February 1940 Terms of this Court and which said investigations cannot be finished during said February 1940 Term of court," and then concludes, "It is therefore ordered that the second December 1939 grand jury * * * be and it is hereby authorized to continue to sit during the March 1940 Term of court for the purpose of finishing said investigations." I. R. 28-29.

The order, in language too plain to require interpretation, authorizes the December 1939 grand jury to finish at the March 1940 Term investigations begun during the February 1940 Term of court. Under the statute, a "district judge may * * * by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, * * *." The Court had the power to continue the December grand jury

to finish investigations begun by it only at the December Term. The order authorizing the December grand jury to consider at the March Term matters which it began to investigate at the February Term is beyond the power of the Court and is void. Without an order of court, in strict compliance with the statute, extending the life of this grand jury, the grand jury ceased to exist with the adjournment of the February Term and no valid indictment could be returned at the March Term.

What we have said is in substance the holding of the Circuit Court of Appeals. (I. R. 184.) It is submitted that no one reading the plain language of the order could construe it as having any other meaning than that given to it by the Circuit Court of Appeals. Even Government counsel do not suggest that, taken by itself, the order can be given any other meaning. They seek to avoid the effect of the clear language of the order by arguing, (their brief, 28,) without support in the record, that the Judge entering the order did not contemplate that any new investigations had been begun in February that were to be continued into March, and that no new investigations had in fact been begun in February, and that the grand jury by a preamble to the indictment has stated that it did not begin any new investigations in February. To sustain these excuses is to announce that it is not necessary for the record to show affirmatively that a grand jury has authority to act at the term at which it returns an indictment, even where the grand jury is exercising a limited jurisdiction beyond its term of origin.

Government counsel ask this Court to interpolate words necessary to make the order of February 28, 1940, conform to Section 421, Title 28, U. S. Code. They suggest that this Court should consider the testimony of one Brown before the grand jury in January 1940 concerning his activities in the operation of a currency exchange, (III. R.

614-692,) and the reported decision in a contempt proceeding wholly unrelated to this defendant, (116 Fed. (2nd) 455,) to get the right atmosphere, and then "in this setting" they say "the February 28 order must be interpreted." (Their brief, 29.) They suggest that the word "theretofore" should be inserted before the word "begun," that a comma should follow "begun," and that the sentence should be read as though the phrase "during the said December 1939 and said February 1940 Terms" modifies only the verb "finished." (Their brief, 31.) They do not suggest where this Honorable Court gets the authority to rewrite orders of district judges to give life to a grand jury otherwise dead. Furthermore, the order would not conform to the statute if it were rewritten as suggested. The only investigations which may be finished by a grand jury at a term succeeding its term of organization are investigations begun at its original term. If this Court should make the phrase in the order read "to finish investigations theretofore begun," the language would not limit the grand jury to investigations begun at the December 1939 Term. The "theretofore" would refer to the date of the petition, February 28, 1940, and would include the February 1940 Term.

Government counsel rather naïvely suggest (their brief, 31,) "• • • that there is doubt as to the meaning of the February 28 order as a result of its inartistic draftsmanship • • •." The lack of artistry in the order lies in its failure to conform to the statute. It is certainly not an inartistic expression of the District Judge's intention to authorize the grand jury to finish in the March Term investigations which it commenced in the February Term. The draftsman of the order could hardly have chosen language more appropriate to express that intention.

The only case cited by the Government in support of the order, which even approaches the point, is *United States v.*

Parker, 103 Fed. (2nd) 857. The order there considered is not set out in the opinion. The case involves a single continuance of the grand jury and there might be presumptions in support of a first order of continuance which the Court could not indulge in support of a second order of continuance. The statute specifically limits a continuance to a "term succeeding the term" at which the request for continuance is made, and provides that "no grand jury shall be permitted to sit in all more than three terms," and any general order of continuance would be void. A further limitation fixed by the statute on the order of continuance is that it shall be "solely to finish investigations begun but not finished by such grand jury." If the order in the *Parker* case is as general as the opinion indicates, then the decision emasculates the statute. We cannot believe that any court has approved an order under the statute which merely says that the grand jury is to "remain in service until the further order of the Court." There is no authority in the statute for any such order.

Government counsel make the amazing suggestion (their brief, 30) that the meaning of this order is not to be found by reading it, but by referring to the preamble of the indictment itself, particularly the clause, " * * * having begun but not finished during said December Term of court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this Court * * * during the February and March Terms of said Court for the purpose of finishing investigations begun but not finished during said December Term of Court * * * ." This suggestion ignores the basic canon of construction of any document, namely, that if the document is written in clear and unambiguous language its plain meaning is in law its true meaning. Furthermore, a comparison of this recital in the indictment with the order of the District Judge shows that the grand jury requested something entirely different from what its recital in the indictment

says was granted. There would seem to be no more basis for arguing that the Judge's order meant what the recital in the indictment says it meant than that the recital in the indictment meant what the Judge's order said the grand jury requested. The order says the grand jury requested authority to continue to sit "to finish investigations begun but not finished by said grand jury during the said December 1929 and the said February 1940 Terms," whereas the recital in the indictment says that the grand jury "continued to sit * * * during the February and March Terms of said court for the purpose of finishing investigations begun but not finished during said December Term." Under the order the December Term grand jury was authorized to continue to sit at the March Term to finish investigations *begun* at the February Term, whereas under the recital in the indictment this grand jury continued to sit to finish investigations at the March Term which had been *finished* at the February Term. Certainly it is a proposition, the novelty of which does not exceed its absurdity, to suggest that a recital in an indictment as to what the legal consequence, effect and meaning of a judge's order is, is determinative of the real meaning of said order. Whatever weight might attach to a later statement of a district judge as to the meaning of an order entered previously by him, certainly no persuasive argument may be attributed to a statement of a grand jury as to what an order entered on its motion truly means.

It is suggested that the authorization to this grand jury to continue investigations at a third term which it began at the second term is merely an excessive authorization and is a nullity, and that by expunging the void part of the order there remained the valid order to the grand jury permitting it to finish during the March Term the investigations which it had begun during the December Term and had not finished during the December or the succeeding February Term. Government counsel do not suggest what

words may be expunged. To support their argument there is the assertion without proof, that the indictment was in fact the product of investigations commenced during the December Term. (Their brief, 33.) Government counsel seem to overlook the fact that the Bill of Rights (Amendment V., U. S. Constitution) guarantees that no person shall be held to answer for an infamous crime except on an indictment by a grand jury, (*Ex parte Bain*, 121 U. S. 1, 13; *Renigar v. United States*, 172 Fed. 646, 654,) that a Federal grand jury is a creature of statute, (*In re Mills*, 135 U. S. 263, 267,) and that there can be no indictment unless the body returning it is a legal grand jury. (*Smith v. Texas*, 311 U. S. 128; *Norris v. Alabama*, 294 U. S. 587; *Crowley v. United States*, 194 U. S. 461, 474; *United States v. Gale*, 109 U. S. 65, 71; *Dunn v. United States*, 238 Fed. 508, 512; *United States v. Lewis*, 192 Fed. 633, 637; *United States v. Haskell*, 169 Fed. 449, 454.) There being no order conforming to the terms of the statute authorizing this grand jury to sit beyond the February 1940 Term, it ceased to exist with that term, and the act of this group of citizens, after they ceased to be a grand jury, in presenting a document purporting to be an indictment was a nullity.

Finally, it is argued that Section 556, Title 18, U. S. Code, warrants this Court in ignoring the invalidity of this order purporting to continue this grand jury. The very language of this statute shows that it has no application. It is designed to cure defects in the form of an indictment "presented by a grand jury." *In this case there is no grand jury and so there can be no indictment.* The challenge here goes to the very root of this prosecution. Notwithstanding the assault upon human rights in a great part of the world, we of the United States of America still believe that the fundamental and blood-bought principles written into our Bill of Rights are matters of substance and not mere form. It is no mere "technicality" to ignore the safeguards

of human liberty written into our statutes. *Bruno v. United States*, 308 U. S. 287, 294; *Edwards v. United States*, 312 U. S. 473, 482; *Renigar v. United States*, 172 Fed. 646, 655, 658.

It is always easy for the prosecutor to say that an accused was not prejudiced by an error committed, even where it goes to the denial of a constitutional safeguard. Such is the answer of the mob when it hangs a "guilty" man. We assert that William R. Johnson is not guilty of the offenses charged, but if he were, he is entitled to be accused by presentment by a grand jury as the Constitution provides. This right the District Court denied; and the Circuit Court of Appeals, by reversing the judgment of the District Court, merely applied the plain law of this country as established by the Constitution, the statutes and the decisions.

B. The December 1939 grand jury had no authority to return counts 4 and 5, which relate to events which did not occur until March 15, 1940.

Counts 4 and 5 are a complete refutation of the oft-repeated statement of Government counsel that no new investigations were in fact begun after the conclusion of the December 1939 Term.

The fourth count of the indictment charges a wilful attempt to evade income taxes for the year 1939. The return with respect to this year was not due until March 15, 1940, and was in fact filed on that date. The offense charged in the fourth count was committed, if at all, on March 15, 1940. (*Bowles v. United States*, 73 Fed. (2nd) 772, 775; *United States v. Miro*, 60 Fed. (2nd) 58, 61; *O'Brien v. United States*, 51 Fed. (2nd) 193, 196; *United States v. Mathis*, 28 Fed. Supp. 582, 584.) The investigation with respect to 1939 could not have been begun at the December 1939 Term which ended before February 3, 1940. The motion to quash specifically alleges that the

investigation of the subject matter of the fourth count was first begun at the March 1940 Term, (I. R. 30,) and in the nature of things the investigation with respect to this offense could not have been begun until March 15, 1940. The December grand jury could not anticipate that Johnson might fail to file a return or might file a false return six weeks after the December Term closed, and begin an investigation of an offense which might never occur or which investigation it obviously could not finish until the second succeeding term. This grand jury could not have returned an indictment at the December Term charging the offense alleged in the fourth count, not because of any complexity in the investigation but because the offense had not been committed. We submit that the reasoning of the Circuit Court of Appeals with respect to the invalidity of this count of the indictment (I. R. 185-186) is unanswerable.

The argument that the word "investigations," as used in Section 421, Title 28, U. S. Code, should be construed to include inquiry concerning offenses which may be committed in the future or which may never be committed, as well as offenses already committed, finds no support in law or logic. It is true that a grand jury has broad inquisitorial powers, and that while it has legal existence it may investigate any facts necessary to determine whether an offense has been committed, the precise nature of the offense, and the identity of the offender. No authority has been cited and we think none can be cited which supports the contention of the Government that the December 1939 grand jury could be continued to the February 1940 Term and again to the March 1940 Term to finish an investigation with respect to an offense which, at the December Term, it could only anticipate might be committed and which, in the nature of things, could not be committed until the occurrence of an event which, under the law, could not occur until the middle of the term of court second succeeding the

term at which the grand jury was impanelled. There is nothing said in the opinion of the Circuit Court of Appeals which will in any way impede the carrying out of the essential functions of the grand jury in making a thorough investigation of offenses already committed. Grand juries should not be permitted to waste time and money investigating offenses which some crystal-gazer thinks may be committed by someone some time in the future.

The fifth count of the indictment charges this defendant and others with conspiracy to defraud the United States by depriving it of the income taxes due from this defendant in the years 1936 to 1939 inclusive. As the Circuit Court of Appeals says (I. R. 186), the situation with reference to this count which charges a continuing offense is different from the situation with reference to the fourth count which charges an offense which is not continuing. We think, however, that the action of the District Court in denying the motion to quash, which alleged under oath that the matters charged in the fifth count of the indictment were first presented to the grand jury at the March 1940 Term and that the investigation of the matters alleged in this count was not begun by the grand jury at the December 1939 Term, without giving this defendant an opportunity to offer evidence in support of his allegations of fact, was error. There is no denial of the allegations respecting the time of the commencement of the investigation. This defendant, by his then attorney, asked for a rule on the Government to answer his motion to quash (I. R. 44) and this motion was denied. (I. R. 45.) If the Government controverted the facts pleaded, then this defendant should have been given opportunity to prove his allegations. *Edwards v. United States*, 312 U. S. 473, 482; *Carter v. Texas*, 177 U. S. 442, 447; *Nanfity v. United States*, 20 Fed. (2nd) 376, 378.

C. The December 1939 grand jury had no authority to return at the March 1940 Term the first, second and third counts of the indictment. It had finished its investigation with respect to the subject matter of these counts at the February 1940 Term and there was no authority under the statute to continue it to the March 1940 Term for further investigation as to such matters.

The Circuit Court of Appeals misapprehended our contention with respect to this ground of challenge to the validity of the first three counts of the indictment. We agree that an existing grand jury is not precluded from continuing an investigation after the return of an indictment and from subsequently indicting for the same offense, as the Circuit Court of Appeals holds, (I. R. 185,) but it is our contention that this grand jury ceased to exist at the end of the February Term with respect to the matters as to which its investigation had been completed. The statute says that a grand jury may be continued "solely to finish investigations begun but not finished by said grand jury." If it has finished its investigation then there is no authority to continue it. This body of citizens was not a grand jury at the March Term. The motion to quash alleges that the investigation of the matters covered by the first, second and third counts was finished and concluded at the February 1940 Term of court, (I. R. 30-31,) and the fact that the grand jury returned an indictment on March 1, 1940, a day of the February Term, charging this defendant with an attempt to evade income taxes for the years 1936, 1937 and 1938 is, under the circumstances, conclusive that it had finished its investigation with respect to the matters covered by these counts. We think no one will contend that if there had been no attempt to continue this grand jury to the March Term the indictment returned at the February Term would not have been a completed presentment by the grand jury.

D. The motion to quash alleges facts, not conclusions.

The argument of Government counsel that the verified motion to quash alleges no specific facts but only ultimate conclusions (their brief, 36-40) falls of its own weight. It is specifically alleged in the motion to quash that no investigation of the matters covered by counts 4 and 5 of the indictment was begun at the December 1939 Term of court and that the investigation of said matters was first begun at the March 1940 Term of court, and it is likewise specifically alleged that the investigation of the matters covered by counts 1, 2 and 3 was finished and concluded at the February 1940 Term of court. (I. R. 30-31.) It is difficult to conceive how there could be more specific and direct allegations of fact. The motion to quash challenges the jurisdiction of the Court. Under the Bill of Rights (Amendment V., U. S. Constitution) no person can be held to answer for an infamous crime unless on indictment by a grand jury, and under the statute (Sec. 421, Title 28, U. S. Code) the grand jury ceases to exist with the adjournment of the term at which it was impanelled, unless it is continued "solely to finish investigations begun but not finished by such grand jury." Obviously, no matter how much like a legal and proper grand jury any group of twenty-three men may act, unless they are in fact a legal grand jury they cannot return a legal indictment. Such a group does not have the power to create itself into a grand jury and its adherence to legal form cannot infuse it with legal life.

E. It must affirmatively appear from the record in a criminal case that every step necessary to the validity of the indictment has been taken before a valid sentence can be entered. There is no presumption that the December 1939 grand jury had authority to return an indictment at the March 1940 Term of court.

Government counsel lift out of the context of the opinion of the Circuit Court of Appeals the sentence, "We think failure to prove the allegation with reference to the authority of the grand jury to act is likewise fatal," and build a man of straw and then proceed to knock it down. (Their brief, 40-42.) When the entire discussion of the Circuit Court of Appeals is read it is clear that all it holds is that it must appear affirmatively from the record in a criminal case that an indictment was returned by a legal grand jury before a valid sentence can be entered. (I. R. 189-190.) This is the holding of the same court in *Skidmore v. United States*, 123 Fed. (2nd) 604, involving the same grand jury sitting at its second term. Where there is a direct challenge to the authority of a grand jury to act at a term succeeding its term of organization, the record must disclose facts from which it can be determined that the grand jury is a legal body acting within the limitations which Congress has definitely and plainly fixed. Government counsel seem to take the position that this defendant was not entitled to an opportunity to present evidence in support of the allegations of fact in his motion to quash showing absence of grounds for continuance, and that, having been denied a hearing at this preliminary stage, he does not put in issue by his plea of not guilty the allegation in the indictment that the grand jury was legally continued. As the Circuit Court of Appeals said, (I. R. 190,) "There may be room for contrariety of opinion as to the precise manner in which the authority of a grand jury should be challenged, but we doubt if any will contend that

the Government can wholly evade the challenge as has been done in the instant case." If the District Court had ordered the Government to answer the motion to quash and if it had been established by the evidence heard at this preliminary stage of the proceedings that the allegations of fact of the motion to quash were not true, and that the grand jury was acting legally at the March 1940 Term, then this question of failure of proof with reference to the allegations in the indictment would not have arisen.

We recognize the general rule that regularity of judicial proceedings is presumed and that it is not necessary to prove the foundation of the authority of the grand jury to return the indictment. We submit that this rule applies only where authority of the grand jury is exercised in the course of ordinary jurisdiction. Here we have a special situation with respect to the authority of the grand jury comparable to that which arises where action is by a special court. In such a case nothing is presumed in favor of jurisdiction. The authority to act in a particular matter must affirmatively appear from the record. *Galpin v. Page*, 85 U. S. 350, 366; *Miller v. United States*, 78 U. S. 268, 299.

It is obvious that the author of the indictment recognized that the indictment had to allege facts which showed authority of the December 1939 grand jury to return an indictment at the March 1940 Term of court. This could not be presumed. He knew that a grand jury is a statutory body and that it has no existence beyond the terms of the statutes under which it is organized or continued. If it was necessary to allege special facts showing the right of this grand jury to act at a term subsequent to the one at which it was summoned and organized, then it was necessary to prove these facts. Having evaded the issue before trial, the prosecution had to meet the issue at the trial. This defendant was entitled to a hearing on this issue at some stage of the proceeding. Having postponed the issue to the

trial, the same burden was on the Government to prove the facts peculiar to the right of this particular grand jury to act as to prove the fact of venue and other special matters going to the jurisdiction of the Court. The Circuit Court of Appeals has not departed from established practice and its decision does not raise obstacles which will impede the effective administration of the criminal law. It merely announces the elementary and fundamental proposition that a defendant is entitled to a hearing on any issue properly presented by his pleas.

The judgment of the Circuit Court of Appeals, reversing the conviction of this defendant, should be affirmed for the reasons assigned under this division of our brief.

II.

The demurrer should have been sustained. The allegations of the indictment are insufficient, uncertain, duplicitous and repugnant.

This defendant is entitled to support the judgment of the Circuit Court of Appeals reversing the conviction on any ground warranted by the record, though he may wish to show that the Circuit Court of Appeals might have based its judgment on different or additional grounds. *Ryerson v. United States*, 312 U. S. 405, 408; *McGoldrick v. Campagne Generale Transatlantique*, 309 U. S. 430, 434; *Le Tulle v. Scofield*, 308 U. S. 415, 421; *Langnes v. Green*, 282 U. S. 531, 538; *United States v. American Railway Express Co.*, 265 U. S. 425, 435.

We submit that the Circuit Court of Appeals was in error in overruling this defendant's contention that counts 1, 2, 3 and 5 of the indictment are void, even if the grand jury had legal existence. (I. R. 190-193.) Should this Honorable Court hold that the order continuing the grand jury

was in conformity with the statute, it should nevertheless sustain this defendant's demurrer (I. R. 137-139) and affirm the judgment of the Circuit Court of Appeals reversing this conviction.

It is alleged in the first count of the indictment that the December 1939 grand jury, "having begun but not finished during said December Term of court among other things an investigation of the matters charged in this indictment, and having continued to sit by order of this Court in and for said division and district during the February and March Terms of said court for the purpose of finishing investigations begun but not finished during said December Term of court," does present and charge at the March 1940 Term. There is lacking the essential jurisdictional allegation that the investigation begun at the December Term had not been finished at the February Term.

Under Section 421, Title 28, U. S. Code, a grand jury may be continued *solely to finish investigations begun but not finished* by such grand jury. If a grand jury has begun an investigation and has finished the investigation at the term for which it was summoned and organized, it cannot be continued to a succeeding term. And if a grand jury has begun an investigation at its original term and has not finished the investigation at that term and is continued to a succeeding term to finish its investigation and it does finish the investigation at such succeeding term, then it cannot be continued to a second succeeding term.

If the investigation in this case was finished at the February Term as to the matters charged in the indictment herein, or any of them, then there was no authority to continue the grand jury to the March Term as to such matters. We have already pointed out that this grand jury at the February Term returned an indictment of three counts identical with the first three counts of the present

indictment, and so it appears conclusively that the grand jury had finished its investigation at the February Term of the offenses alleged as to the years 1936, 1937 and 1938.

This challenge to the indictment goes to the jurisdiction of the District Court. There is no presumption that the December 1939 grand jury had authority to return an indictment at the March 1940 Term. The presumption is directly to the contrary. A Federal grand jury is a creature of statute and can have only the existence authorized by statute. (*In re Mills*, 135 U. S. 263, 267.) Except where continued as provided by law, a grand jury has no existence beyond the term for which it was impanelled. (*Jones v. United States*, 162 Fed. 417, 421; *Nealon v. People*, 39 Ill. App. 481, 483; *Evers v. State*, 179 Ark. 1123; *State v. Shawley*, 334 Mo. 352; *Walton v. State*, 147 Miss. 851.) The omission to allege in the indictment that this December grand jury had not finished its investigation at the February Term is fatal to the validity of the indictment because the grand jury had authority under appropriate orders of court to continue to sit at the March Term *solely to finish* investigations *begun* at the December Term and *not finished* at the December Term and the February Term. The allegation is that it had not finished at the *December* Term but there is no allegation that it did not finish at the *February* Term.

Counts 2, 3, 4 and 5 of the indictment make no allegations with respect to the organization or continuance of the December grand jury, either by reference to the first count or otherwise. This December grand jury had no authority to return these counts of the indictment at the March 1940 Term unless it had begun but not finished the investigation at the December Term and had been continued to the February Term to finish such investigation and had not finished such investigation at that term and had then been continued to the March Term. Each count of the

indictment must be sufficient in itself. Where any count fails to allege facts which show that the grand jury which returned it had a legal existence, when that grand jury without special authorization would have had no existence, that count is void. On this ground the last four counts are insufficient.

The offense of attempting to evade payment of income tax is committed on the day the return is filed or is due. (*Bowles v. United States*, 73 Fed. (2nd) 772, 775; *United States v. Mathis*, 28 Fed. Supp. 582, 584.) The first four counts of the indictment allege that the attempt was committed on March 15 in the years 1937, 1938, 1939 and 1940, respectively. There follow allegations in each of the counts which are repugnant to the allegation that the offense was committed on March 15. For instance, in the first count it is alleged that a false return was made on March 12, 1937, that it was filed on March 15, that a part of the tax was paid on March 15 and the balance of the tax thereafter, and that the tax thereafter paid was insufficient to pay the whole tax due. It is further alleged that the defendant concealed from the officers of the United States his income and the sources of his income and the books and records reflecting his income and the sources thereof, but no date is alleged for this charge of concealment. It appears from other allegations that the concealment continued throughout the year 1936 and up to March 15, 1937 and thereafter until the return of the indictment. What we have said with respect to the first count applies with changes of dates to the second, third, and fourth counts. If the offense charged against Johnson in these counts is not a single overt act committed on a day certain, then there is no statute of limitations which can apply, for as long as he does not pay the tax due under the law he is continuing his attempt to evade the payment of such tax. An attempt is not a continuing offense.

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The first four counts of the indictment are duplicitous in that they each charge four distinct offenses,—to-wit, the offense covered by Section 145(b) which carries a maximum penalty of \$10,000 fine and imprisonment for five years, and three offenses covered by Section 145(a) which carry a maximum penalty of \$10,000 fine and imprisonment of one year. To illustrate: the first count charges specifically that Johnson wilfully attempted to defeat and evade a large part of the tax due upon his income for the year 1936 on March 15, 1937; and it also charges that Johnson failed to make a return as to a large part of his income for 1936, which return was due on or before March 15, 1937, that he failed to keep records and supply information required by law for the purposes of computation, assessment and collection of income tax, and that he failed to pay the tax due on March 15, 1937, or thereafter. It is true that it is alleged that the acts which constitute the offenses covered by Section 145(a) are alleged as means of committing the offense covered by Section 145(b), but if we should strike out of the indictment the allegations with respect to the offense of wilfully attempting to evade and defeat his tax and leave only the allegations with respect to any of the other offenses, the indictment, if otherwise sufficient, would be sufficient to charge such other offense, and upon conviction the defendant would be subject to the penalties prescribed by Section 145(a).

Duplicity is the joining in one count of two or more distinct offenses. Where separate offenses are sufficiently charged, none of them can be rejected as surplusage in order to support the charge as of another. There can be no aider by verdict where the offenses are subject to different punishment as in this case. *Creel v. United States*, 21 Fed. (2nd) 690, 691; *John Gund Brewing Co. v. United States*, 204 Fed. 17, 21.

We find no case where the point we make with respect to an indictment under this statute has been discussed in

the decision. We think *O'Brien v. United States*, 51 Fed. (2nd) 193, 196, supports our position because it is there squarely held that the offenses covered by paragraphs (a) and (b) of Section 145 are separate and distinct offenses. If they are, then it follows under the authorities that they cannot be joined in one count of an indictment. See also *United States v. Noveck*, 273 U. S. 202, 206.

The Circuit Court of Appeals held that the demurrer should have been sustained as to the fourth count, but it held that counts 1, 2, 3 and 5 were good as to this defendant. We submit that the demurrer should have been sustained as to all counts and that the judgment of the Circuit Court of Appeals should be affirmed on the grounds argued under this division of our brief.

III.

The evidence did not establish the guilt of defendant Johnson under any count of the indictment and a verdict of not guilty should have been directed.

There is no direct evidence in this case that William R. Johnson has failed to return taxable income for any year. The direct evidence is that he has returned all taxable income for the past twenty years, and particularly for the years 1936, 1937, 1938 and 1939 covered by the indictment, and that he has paid all income taxes due the Federal Government. The case for the prosecution rests on circumstantial evidence alone and it is by mere conjecture that this defendant is made the owner of a string of gambling houses and charged with an income from the operation of these houses.

We need not remind this Court that the burden is on the prosecution under the first four counts to prove beyond a reasonable doubt that defendant Johnson had a taxable

income over the amount returned for each of the years involved, and that the mere fact that he had transactions involving large sums of money would not prove that all the money handled in any particular year was taxable income for that year. Johnson could not be guilty of attempting to evade a tax unless some tax was due. (*Gleckman v. United States*, 80 Fed. (2nd) 394, 399; *O'Brien v. United States*, 51 Fed. (2nd) 193, 196.) Johnson was not required to prove that he had paid all taxes due from him. The burden of proof in a criminal case never shifts to the defendant. (*Chaffee & Co. v. United States*, 18 Wall. 516, 545; *McKnight v. United States*, 115 Fed. 972, 974; *Melton v. United States*, 120 Fed. 504; *Minner v. United States*, 57 Fed. (2nd) 506, 512.) These sound principles of law are well established and have been applied by this Court.

It is also settled law that unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused, (*Paddock v. United States*, 79 Fed. (2nd) 872, 876; *Nicola v. United States*, 72 Fed. (2nd) 780, 786; *McClintock v. United States*, 60 Fed. (2nd) 839, 842; *Dickerson v. United States*, 18 Fed. (2nd) 887, 893; *Grantello v. United States*, 3 Fed. (2nd) 117, 118,) and that where the evidence for the prosecution is as consistent with innocence as with guilt, a judgment of conviction will not be sustained by a reviewing court. (*Gargotta v. United States*, 77 Fed. (2nd) 977, 984; *Dahly v. United States*, 50 Fed. (2nd) 37, 43; *Vinciguerra v. United States*, 21 Fed. (2nd) 508, 510; *Bishop v. United States*, 16 Fed. (2nd) 410, 417; *Harrison v. United States*, 200 Fed. 662, 664.) The law requires that there be more than some evidence of guilt. (*Towbin v. United States*, 93 Fed. (2nd) 861, 866.) The proof must be of that substantial character which leaves an abiding conviction that the accused is guilty of the offense charged.

Applying these rules, fundamental in the administration of criminal justice under the American system, let us examine the evidence in this case as to each count separately.

As to Count 1—Year 1936.

We assert with confidence that there is no evidence which supports the charge that defendant Johnson wilfully attempted to evade the payment of income taxes for the year 1936, either on the theory that he owned a group of gambling houses and derived income therefrom, or on the theory that he expended in 1936 more cash than he had available according to his returns for that year and prior years. Johnson reported a taxable income of \$173,220.40 in 1936 and the Government failed to sustain its burden of proving that he had a greater income.

At the outset of our discussion of the evidence, we direct attention to the fact that the financial transactions of the gambling house operators with the currency exchanges consisted merely of cashing checks and exchanging currency. These institutions accept no deposits. They keep a record of the checks cashed only for the purpose of getting reimbursement from the patron if a check is not paid by the maker. (II. R. 494, 533.) They keep no record of currency exchanged. These gambling house operators use bills for making bets at the gambling tables and they wear them out. (III. R. 792.) When this worn currency is exchanged for new, the operator has the same amount of money. (II. R. 491, III. R. 816.) The Court will see, as the evidence is analyzed, that there is no proof in this record of the amount actually involved in these transactions.

The evidence as to each gambling house involved must be considered separately. Proof that Johnson owned in whole or in part a gambling house operated by Flanagan, if there were any such proof, would not be proof that he

owned or was interested in gambling houses operated by Sommers or Kelly or Hartigan or any other person.

The only evidence which could have any bearing on Johnson's ownership of gambling houses during the year 1936 would be that testimony which related to conversations, acts or transactions of Johnson during that year or years prior thereto. Conversations and acts of co-defendants, outside the presence of Johnson and with which Johnson was in no way connected by proof, are hearsay as to Johnson and cannot be considered under the first count of the indictment.

The evidence shows that Flanagan operated a gambling house alternately at 4020 West Ogden Avenue and at 2141 South Crawford (now Pulaski), and a service bureau first located at 2135 South Crawford (now Pulaski) and later at Irving Park and Milwaukee. (III. R. 931-932.) We ask in all sincerity, what evidence is there which shows that Johnson had any interest in these establishments in 1936? The fact that Johnson owned the buildings where Flanagan's gambling house was operated, and leased these buildings to and collected rent from Flanagan, (III. R. 932, 950,) which rent he returned as income, (see returns,) is not proof that Johnson owned the gambling houses; it is proof to the contrary. Certainly Hayes' testimony (II. R. 294), denied by Johnson (III. R. 953) and Flanagan (III. R. 938), that Johnson spoke excitedly to Flanagan concerning a robbery occurring at the 4020 Club in 1935 does not tend to prove that Johnson owned the gambling house operated at that address in 1936. The testimony of Lenz (II. R. 151), denied by Johnson (III. R. 951) and Flanagan (III. R. 937), regarding a conversation between him and Johnson and Flanagan at the 4020 Club in 1935 regarding a dispute between Lenz and Flanagan over the service charge for the racing news service, assuming it is true, is not that substantial evidence of ownership of the gambling

house operated in Johnson's premises which the law requires in a criminal case. This testimony is as consistent with the direct testimony of Johnson and Flanagan that Johnson had no financial interest in the rate, but was interested only in his tenant, as it is with the unsupported theory of the prosecution that Johnson was the proprietor of the gambling house receiving the service. The income tax returns of Flanagan prepared by Brantman prior to 1936 (II. R. 425, 445) and by Radomski in 1936 (II. R. 107) were hearsay as to Johnson; but, if they are held to be admissible against him, they do not even tend to prove that Flanagan was an employee of Johnson or that Johnson had any interest in Flanagan's establishment. Leaving grounds of incompetency out of consideration, under this evidence can it be seriously contended that the total of the currency exchanged and checks cashed at the Lawndale Currency Exchange by Flanagan and his employee Couch should be charged to Johnson as income in 1936? Except rent paid, *not a dollar of Flanagan money was traced to Johnson*. We think it clear, under the most elementary rules, that there is a complete absence of evidence necessary to support a deduction that the income from Flanagan's house was Johnson's income, even if it were proved that there was an income from the house, taxable to anyone.

The evidence shows that Kelly operated the D. & D. Club in the Lincoln Park Building at Dearborn and Division. (II. R. 458, 878.) The fact that Kelly rented space in this building owned by Johnson (III. R. 950), through the rental agent Tavalin (II. R. 14), and paid rent for his space while he operated there (II. R. 16) is proof that Johnson did not own the gambling establishment of Kelly rather than that he did. Kelly rented the space in 1936 and employed workmen to make the necessary alterations. (III. R. 878, 885.) There is no proof that Johnson had any connection with the D. & D. Club in 1936 or that he

received any income from the club other than the rent paid. The renting was handled through Tavalin exactly the same with respect to Kelly as with respect to other tenants in the building, (II. R. 14, 23,) and all the rent receipts were reported by Johnson in his return for 1936. Gov. Ex. R-10, III. R. 950.

The evidence shows that Sommers operated the Horse-Shoe Club at 4721 North Kedzie and the Dev-Lin Club at Devon and Lincoln. He acquired these establishments from former owners in 1934 and 1935, respectively. (III. R. 782, 784, 810, 812, 896.) There is much more testimony directed at Johnson's connection with Sommers' establishments than with the others, but an examination will show that this evidence does not prove that Johnson had an interest in the Sommers' gambling houses, much less that he was the sole owner of them. Brantman, who had been preparing income tax returns for Johnson since 1925, testified that in 1932 he told Johnson that the Government was making a drive for returns from persons making gains from illegal pursuits and that at Johnson's request he later reported this to Sommers. (II. R. 421-423, 429.) Brantman qualified these statements materially on cross-examination and admitted he might be mistaken about the time and substance of conversations. (II. R. 435-436, 438-440.) These conversations occurred, if at all, three or four years prior to 1936 and at least a year or two prior to the time Sommers became the proprietor of the Horse-Shoe and the Dev-Lin. Barnes was operating the Horse-Shoe until his death in 1934. (III. R. 782.) The fact that Johnson and Sommers both switched to Radomski for accountant's service in the preparation of their returns for 1936 is a coincidence which proves nothing. The stories of Cobb (II. R. 351), Didier (II. R. 225) and Singer (II. R. 396) that Johnson put them to work or helped them get work with Sommers are uncertain as to detail, as is natural because of lapse of time. Johnson admitted that he helped hundreds of men get jobs during the period of

widespread unemployment but denied he hired any of them or ordered them hired. (III. R. 952.) Neither the workmen who made repairs at the Sommers establishments nor the men who furnished bus, transfer and storage service to Sommers testified that Johnson had anything to do with their employment. The Government relies on inferences from this sort of proof to show that the total of the currency exchanged and checks cashed by Sommers in 1936 at the Northern Trust Company and the Albany Park Currency Exchange, involving turn-overs aggregating about a half million dollars, represented income of defendant Johnson. None of the employees of the Northern Trust Company or of the Albany Park Currency Exchange, who dealt with Sommers, testified that they had any dealings with Johnson or that he had any connection with any of the transactions.

The evidence does not even establish facts from which the inference of Johnson ownership can be drawn, much less the many facts necessary to warrant the conclusion that the aggregate of Sommers' transactions represented income of defendant Johnson. The proof does not even establish that the checks cashed or currency exchanged represented income of anyone. The theory of the prosecution seemed to be that these transactions were too large for a little fellow like Sommers, therefore Sommers must be working for some big operator like Johnson, and that the transactions were those of this unidentified operator and that they represented profits to him. This is piling inference on inference and hopping from assumption to assumption with wild abandon. *That any of this money handled by Sommers ever reached Johnson is pure conjecture.* There is no evidence on which to rest the conclusion of Agent Clifford that this \$500,000, which may have been one \$10,000 bank-roll turned over 50 times during the year, should be included in Johnson's income for 1936. On this evidence alone Clifford included the aggregate of all of Sommers' transactions in 1936 as income received by Johnson. (III.

R. 751.) This accounts for about \$500,000 of income which the prosecution says Johnson failed to report in 1936.

The evidence shows that Hartigan operated the gambling room at the Lincoln Tavern during the winter of 1935-1936 and opened the gambling establishment at Harlem Stables in the summer of 1936. (II. R. 492; III. R. 804, 806, 896.) There is no proof that there was any income from these gambling establishments in 1936, except the testimony of Marcus of Albany Park Currency Exchange that some of the checks cashed by one Downey bore the initials "L.T.," which he understood meant "Lincoln Tavern," (II. R. 477, 479,) and a few checks were marked "H.S.," which he presumed meant "Harlem Stables." (II. R. 487.) There is no proof of the amount of these checks in 1936 or that these checks represented income of anyone or that they were checks given by gamblers. There is no proof that Johnson had any knowledge of the existence of the checks or of the cashing of the checks or that he ever received any part of the proceeds of the checks. The evidence on which the Government relies to establish Johnson's connection with Hartigan's establishments consists of a few casual conversations between Johnson and others and a few visits made by Johnson to Hartigan's places, and occurrences at Harlem Stables in August, 1936. The only testimony tending to connect Johnson with Lincoln Tavern was that of Schultz that he saw Johnson looking over construction work in 1936 (II. R. 237) and of Atlas that Johnson asked him to install a bookkeeping system at Lincoln Tavern. (II. R. 305.) Johnson denied the Atlas conversation (III. R. 953) and Wait said that no one was interested with him in the Lincoln Tavern restaurant. (III. R. 896.) Certainly the testimony of Cobb that Hartigan told him in 1936 not to say that he was working for Johnson (II. R. 356) was pure hearsay. If competent, it did not prove that he was working for Johnson; it tended to prove the contrary. The only testimony tending to show that Johnson had an inter-

est in Harlem Stables relates to a series of events in August 1936 involving a controversy with Glenn and Russell Glave who claimed that they were the owners of the property prior to its being taken over by Hartigan and that they were entitled to the money that had been paid Earl Jackson as the purchase price. (II. R. 283, 290, 472, 475.) Assuming, contrary to the fact, the truth of the testimony of the Glaves that Johnson furnished the \$600 which was paid in settlement of the various claims, this testimony is as consistent with the theory of the defense that the settlements were made on behalf of Hartigan at Hartigan's expense as with that of the prosecution that Johnson was settling on his own behalf. This testimony does not prove that Johnson was the owner of Harlem Stables or even that he was financially interested in it. All of the direct evidence on the subject is that Hartigan leased the premises and paid the rent and that he was home ill on the day the settlement was made with the Glaves and their former employees, and that the money paid in these settlements was Hartigan's money. (III. R. 804, 805, 813, 953, 971.) If we assume that this does tend to show that Johnson had some interest in Harlem Stables, it does not prove that he owned it or that he had any income from the place in 1936.

The evidence shows that Creighton owned the Club Southland and a group of other gambling houses on the south side of Chicago and in suburbs. (III. R. 850-858.) There was no proof of any character that Johnson owned Creighton's gambling houses or that he was financially interested in them or that he received any income from them in 1936. *No Creighton money was traced to Johnson*, but the Government included in Johnson's income for that year the aggregate of checks cashed and deposits made by Creighton at the Mid-City National Bank in 1936. Even the jury rejected the baseless deduction that Creighton was a stooge of Johnson and acquitted Creighton.

There is no evidence worthy of credit that these gambling houses were operated as a unit, but if the evidence received for this purpose were accepted at face value, it would establish, not that Johnson was the sole owner, but that the co-defendants, or some of them, were partners in the operation of the group of houses, or some of them, or had some working arrangement under which they cooperated in the promotion of their respective businesses. The fact that employees worked first for one and then for another as business required, that one proprietor took his customers to an open house when his house was closed, and that these gambling house proprietors used one group of skilled workmen to make repairs and one transferman, one storage house and one bus company, does not even tend to prove the charges in this indictment. As the Circuit Court of Appeals pointed out, these facts prove merely that these men, engaged in the same business, followed generally a common pattern and that if the facts tended to prove any crime, it was a conspiracy to violate the laws of the State prohibiting the operation of gambling houses. We think the Circuit Court of Appeals was clearly right when it said that the verdict of the jury cannot be supported on the theory that Johnson was the sole owner of this string of gambling houses and that he received income therefrom in the amount of the financial transactions of the operators of these gambling houses. (I. R. 195.) Under the first theory of the prosecution there was no evidence to support the first count.

Now let us look at the proof of expenditures. Taking into consideration only the record as made by Johnson's income tax returns and assuming the accuracy of the testimony of Agent Wilson that Johnson told him that he had \$78,000 in cash available at the beginning of 1932, Johnson had available for expenditure during 1936 a total of \$356,252.94. Taking the Government's testimony regarding expenditures prior to and in 1936, Johnson had left at the

end of the year cash in the amount of \$281,432.47. Thus the indirect method of proving income by expenditures falls flat as far as 1936 is concerned.

Agent Clifford, who summarized the evidence for the Government, admitted the first count was not proved except on the assumption that Johnson owned the gambling houses and that all checks cashed and currency exchanged by the operators represented income of Johnson. (III. R. 759.) We have shown that this assumption is pure conjecture.

The Circuit Court of Appeals was right in holding that the motion for a directed verdict as to the first count of the indictment should have been sustained and in reversing the conviction for this reason. There is no competent evidence which shows any income tax due from Johnson for 1936. He paid \$78,550.70 for this year.

As to Count 2—Year 1937.

We assert that there is no evidence to support the claim of the prosecution that defendant Johnson was interested in, much less the sole owner of, a string of gambling houses in 1937 and that income derived from these houses was income of Johnson. Johnson reported income of \$264,015.13 in 1937 and the Government did not prove on any theory that he had income in excess of this amount.

As to Flanagan's and Creighton's places, there was no testimony of conversations or acts or transactions of Johnson in 1937. As to Kelly's place, there is the testimony of Grushkin relative to the installation of air-conditioning at the D. & D. Club, (II. R. 39-45,) and the testimony of Tavalin that Kelly's back rent amounting to \$1,800 was settled for \$100. (II. R. 17, 27.) These transactions relating to Johnson's building operations as a landlord do not prove that Johnson was the owner of the D. & D.

Club, one of the tenants; but they tend to prove the contrary. As to Sommers' places, Lebbin testified that Johnson spoke to Sommers about giving Lebbin employment at the Horse-Shoe, (II. R. 322,) and Pollack testified that Johnson offered to return money lost by him when a stick man called crooked dice at the Dev-Lin. (II. R. 379-380.) This proves nothing material to the issues. Bissel's testimony that Sommers telephoned the boss about making him a loan and that Sommers told him the boss was Johnson (III. R. 545-546) is rank hearsay as to Johnson. As far as Hartigan's places are concerned the only testimony regarding 1937 transactions is that of Cobb, who said he was employed at the Lincoln Tavern after talking with Johnson. (II. R. 352.) He did not say Johnson hired him. Thus, we find no evidence worthy of credit even tending to prove that Johnson owned this string of gambling houses in 1937, nor even that he was financially interested in them. *There was not a syllable of proof that Johnson received any income from these houses.* All the proof was that he received no income from them.

Notwithstanding this absence of evidence, the Government included in Johnson's income for 1937 more than \$600,000 in proceeds from checks cashed by Sommers and Downey at Albany Park Currency Exchange, proceeds in excess of \$200,000 from checks cashed at the Mid-City National Bank by Creighton, and currency (dealing money) exchanged by Sommers and Creighton in excess of \$50,000. There is no proof that these transactions represented profits of anyone and certainly not profits of defendant Johnson. For all that the evidence shows, these transactions may have been merely weekly turnovers of these gamblers' bankrolls. The direct testimony of the employees of these banks and exchanges was to the effect that their dealings were exclusively with Sommers and Creighton respectively and their respective employees. (II. R. 476-493, 503-508, 515-519, III. R. 604-605.) Sommers and

Creighton testified that Johnson had no interest in the transactions and received none of the proceeds. (III. R. 820, 861.) Let it be remembered that Creighton was acquitted.

By pure conjecture and without even the basis for an inference, Clifford, the conjurer, picked out of the air the figure of \$1,047,129.77 as Johnson's income in 1937. III. R. 743.

On the expenditure theory the Government did not establish a case for 1937. If the testimony of William Goldstein, a thoroughly discredited witness, is accepted at full face value, and all of the assumptions and deductions therefrom which the Government makes are accepted, then Johnson spent in 1937 \$465,840.64. (III. R. 764.) Accepting the Government's calculations of Johnson's available cash in 1937, he had \$501,660.61. (III. R. 762-763.) As the prosecution figures, there was a surplus of \$35,819.97. Clifford admitted on cross-examination that the only way he could make a case on expenditures for 1937 was to assume Johnson had spent more than \$5,000 a year since 1932 for living expenses and that he had no other resources than cash income. (III. R. 759-760.) There is a total failure of proof of Johnson's resources in 1937. The Circuit Court of Appeals was misled by an unsupported statement in the prosecutors' brief when it says (I. R. 195) that the proof shows that in 1937 Johnson's expenditures exceeded cash available as shown by his returns. There is no such proof.

In arriving at the amount of cash available to Johnson in 1937, Clifford assumes that Johnson started out at the beginning of 1931 without a dollar in cash and that the only money he had at the beginning of 1932 was \$68,000. (III. R. 745.) This assumption is based entirely on the testimony of Agent Wilson that Johnson told him in January 1934 that on December 31, 1931, he had his bankroll of \$10,000 and \$68,000 in accumulated gambling profits in his

safety deposit box. (II. R. 10.) Even Wilson did not say that Johnson stated that he had no other assets. Johnson testified that during the course of a conversation with Agent Wilson sometime in 1934 relating to Johnson's 1931 return, there was a discussion of an item of \$78,000 which appeared on his return as income from gambling, and that in response to a question from Wilson as to what he had done with this money he told him that he had about \$10,000 of it in his bankroll and that he put the remainder of it in his box. He said that he did not tell Wilson that he had only \$78,000 on December 31, 1931. (III. R. 960.) We respectfully submit that there is no conflict in the version of this interview as stated by Wilson and as stated by Johnson. Certainly there is reasonable explanation in honest misunderstanding or faulty recollection of Wilson, of the apparent difference in the versions of the interview. Johnson is abundantly corroborated in his testimony that he must have had between \$140,000 and \$150,000 in his box in addition to the \$68,000 he put in it in 1931. The Government proved that he paid in 1932 a tax of \$7,576.64, (II. R. 6,) which would be for his income in 1931. This would indicate that he reported in 1931 a gross income of about \$80,000. After the audit of his 1931 return in 1934 he paid an additional tax of \$9,738.90, plus interest and other charges, (II. R. 8, 444) on the claim that he had an income in 1931 of some \$40,000 which he neglected to report. Thus it appears, according to the Government's figures, that in 1931 he had an income of about \$120,000. In addition to this income the Government proved, on the cross-examination of Wait, that Johnson invested in Lawndale Kennel Club \$100,000 in 1927 and that Johnson got his money back by an arrangement with the Hawthorne Club prior to 1931. (III. R. 903-904.) These two items alone confirm Johnson's testimony that he had on hand in cash at the beginning of 1932 some \$220,000. (III. R. 960.) This last bit of evidence was not in the record when Clifford testi-

fied but we present it here because of its bearing on the verdict on this count.

In arriving at the total of expenditures made by Johnson in 1937, Clifford ignores (III. R. 746) the admissions of Goldstein on cross-examination that Johnson had only a half interest in 9730 South Western Avenue, (II. R. 64,) and ignores (III. R. 746) the testimony of Nadherny that Skidmore and not Johnson paid the \$22,400 for the construction of the building on this property. (II. R. 79.) He also accepts the estimate of Tavalin as to the amount paid by Johnson for the equity in the Lincoln Park Building and charges him with payment of the full amount of the outstanding second mortgage notes on that property, (III. R. 748,) and ignores Tavalin's admission that he was depending on recollection and did not know the amounts paid but knew there was some discount. (II. R. 12-13, 25, 31.) In summing up the evidence on expenditures Clifford accepted only the evidence which suited his purposes and rejected all other evidence then in the record.

We respectfully submit that all the evidence fairly considered establishes that Johnson's expenditures in 1937, including an allowance of \$10,000 for living expenses, were \$396,625.76, (Facts, *supra*, pp. 21-23, 33,) and that his available cash was \$641,183.81 and that he had at the end of the year an excess of cash available over expenditures of \$244,558.05. Facts, *supra*, pp. 30-33.

A verdict of not guilty should have been directed as to the second count of the indictment. There was no competent evidence to support the conclusion that Johnson owed a tax for 1937. He paid \$128,399.72 for this year.

As to Count 3—Year 1938.

Johnson reported an income of \$120,975.15 for 1938. We submit that there is no competent evidence in the rec-

ord to support a finding that he had a greater income for this year.

The only new testimony tending to connect Johnson with Flanagan's establishments was the statement of Lenz, made under pressure of cross-examination by the Court and the prosecuting attorney, that Johnson called at the offices of Nationwide News Service to discuss the rates that were being charged Flanagan's service bureau. (II. R. 154, 157.) On cross-examination by the defendant's lawyer, Lenz was very uncertain about the time of the discussion and who was present and what was said, and he finally stated that Johnson was not present at the discussion. (II. R. 164.) This visit to the Nationwide offices was denied by Johnson (III. R. 951,) and Flanagan, (III. R. 937-938,) but, assuming that it was true, it does not prove that Johnson owned the service bureau and does not even tend to prove that Johnson owned the gambling houses subscribing to its service or received an income from them. As to the D. & D. Club, Tavalin testified that Johnson waived some more of Kelly's back rent, (II. R. 17, 23,) but he also testified Johnson did the same thing with respect to many other tenants. (II. R. 27-28.) Weeks testified that he got a job at the D. & D. Club after talking with Johnson, but he made it clear that Kelly employed him and directed his work. (II. R. 276-278.) These circumstances are as consistent with Johnson's innocence as with his guilt; in fact, they support the theory of the defense. The only additional testimony with respect to Sommers' establishments relating to Johnson's connection with them in 1938 was the testimony of Schumacker that Johnson told Sommers to put him to work, (II. R. 178,) the testimony of Kehoe that he was given \$10 a week at the Dev-Lin at Johnson's direction, (II. R. 310,) the testimony of Didier that he was employed at the Horse-Shoe on the recommendation of Johnson, (II. R. 226,) and the testimony of Rebman that she talked with

Johnson about the limit on Red and Black at the Horse-Shoe, and that Johnson told her he would talk to Sommers about it. (III. R. 567.) All this testimony was denied by Johnson (III. R. 952-955) and Sommers (III. R. 813-814, 818); but, assuming the testimony to be true, it does not prove that Johnson owned the Horse-Shoe or the Dev-Lin and certainly does not even tend to prove that Johnson received any income from these places in 1938 which he did not return. There was no new testimony relating to 1938 which showed that Johnson had any connection with the Creighton and Hartigan places.

Government counsel says that "a manager of the Nationwide News Service testified that Johnson * * * stated that his rates should be lower than rates charged other book-makers because customers were drawn into his places by other gambling games." (Their brief, 7.) The reference (II. R. 157) is to an impeaching question read from a statement made by the witness to a government agent. This evidence is not proof that Johnson made the statement to the witness, but is proof merely that the witness made the statement to the agent. This statement offered by the Government, (and we submit improperly received,) to impeach its own witness cannot be considered as an admission of Johnson. *Southern Railway v. Gray*, 241 U.S. 333, 337; *Purdy v. People*, 140 Ill. 46, 52.

On this flimsy foundation the Government erected an income of nearly a \$1,000,000 for Johnson for 1938. *There was no proof that a dollar of this money came into Johnson's hands.* It was assumed, without proof, that proceeds amounting to about \$375,000 from checks cashed by Sommers and others at the Albany Park Currency Exchange, and nearly \$200,000 from checks cashed by Sommers and others at the Lawrence Avenue Currency Exchange, and about \$140,000 from checks cashed by Creighton at the Mid-City National Bank, and that cur-

rency (dealing money) exchanged by these gamblers in the amount of \$250,000, were taxable income from gambling establishments and that an income of \$935,353.80, as stated by Clifford, (III. R. 744,) was received by Johnson. The jury, by its acquittal of Creighton, found in effect that Johnson did not get the quarter million dollars handled by Creighton. This record does not reveal what income the jury found Johnson received in 1938.

The result for 1938, as for other years, arises from the assumption that Johnson was the sole owner of these gambling houses, added to the assumption that there was an income from these gambling houses, added to the assumption that the aggregate of checks cashed and currency exchanged represented profits of these gambling houses, added to the assumption that this total amount was paid to Johnson, added to the assumption that all of this money represented taxable income of Johnson. If this piling of assumption on assumption is not within the condemnation of *United States v. Ross*, 92 U. S. 281, 284, *Mackett v. United States*, 90 Fed. (2nd) 462, 464, *Symonette v. United States*, 47 Fed. (2nd) 686, 688, and other cases, then we do not read the cases aright.

On the theory that Johnson owned these gambling houses and received income from them in 1938, which he did not report, there is a total failure of proof.

Coming to the expenditure theory for 1938 we find the Government discarding its theory that Johnson had an income of \$547,942.38 in 1936 and of \$1,047,129.77 in 1937. Instead of the gambling house proprietorship theory and the expenditure theory complementing each other, they destroy each other. If Johnson had a million-dollar income in 1937, as the Government contends under its gambling house proprietorship theory, then he had abundant funds to meet the expenditures which the Government claims he made in 1938. The Government entirely

ignores the annual periods fixed by the Internal Revenue Act for reporting of income and it seeks to lump together the whole eight-year period covered by the returns received in evidence. The Government starts with January 1, 1932, as its base, and then, without recognizing the annual stops which the law provides, it undertakes to prove that Johnson's expenditures during the eight-year period aggregate more than the amount Johnson returned as income for the eight-year period. Its argument comes to this: In some year or years during the period Johnson did not report all of his taxable income. Taking the year 1938, there is no proof in this record that Johnson spent more money in that year than he had available for expenditure. If the Government's contention that Johnson had an income in 1937 of \$1,047,129.77 is true, and if its contention that Johnson spent \$465,840.64 is conceded, then, according to the Government's own figures, Johnson had an excess of income over expenditures in 1937 of more than \$500,000. If Johnson started the year 1938 with this excess of \$500,000, then, with his income reported for 1938 of \$120,975.15, he had far more cash than was necessary to meet his alleged expenditures of \$553,561.32 in 1938. There was a total failure of proof on the expenditure theory for this year. A conviction for failure to report taxable income for any particular year cannot be sustained from evidence showing expenditures in that year in excess of the amount reported, without proof that the taxpayer was without other resources.

Agent Clifford, in summing up for the Government, starts from nowhere but arrives at his result of excess expenditures over available cash in 1938 by assuming that all of the money spent at the Bon-Air Country Club was spent by Johnson. As we have shown, even if this were the fact, the charges would not be proven, but we show the evidence does not even warrant the assumption. There was no direct proof that Johnson furnished *all* the money

disbursed at Bon-Air. The prosecution was forced to rely on an assumption arising from the fact that Goldstein recorded a deed showing title to the real estate in Johnson and that the operating company's accounts carried credits for disbursements in Johnson's name. The direct evidence showed that Skidmore was interested in the Bon-Air Country Club, that he furnished some of the money to pay for improvements and that he controlled other expenditures, (II. R. 81, 172; III. R. 893-894, 896-898, 914, 916-917, 919-920, 922, 923, 925, 928, 930,) all of which corroborated Johnson's testimony that Skidmore owned half of the property and advanced half of the money spent. (III. R. 956.) Further proof that Goldstein's testimony that Johnson was his only "client" in the purchase of Bon-Air was false is his letter to the seller in which he said that he had "clients" (note the plural) who were interested in purchasing, (Def. Ex. J-6, III. R. 575,) and his statement to the seller's agent that he had to talk to a "couple of other people" before he could close the deal. (III. R. 576.) Co-defendant Wait, the president of the operating company and the representative of the owners who disbursed most of the money in 1938, testified that the money was furnished to him by Johnson and Skidmore in equal amounts. (III. R. 897.) Wait was acquitted by the jury.

A verdict of not guilty should have been directed as to the third count of the indictment. There was no competent evidence to support the conclusion that Johnson owed a tax for 1938.

As to Count 4—Year 1939.

Johnson reported a net income of \$268,885.98 for 1939 and the Government failed in its attempt to prove that he had taxable income which he did not report.

There is no new proof of ownership from Johnson's conversations, acts or transactions in 1939 which is worthy of characterization as evidence. As to the D. & D. Club there is proof that his agent waived some more of Kelly's back rent, which is the course followed as to other tenants who could not pay. (II. R. 17, 27.) As to the Horse-Shoe, there was the testimony of Lang and Wolfson that Johnson helped them get jobs with Sommers, (II. R. 319, 387,) but no proof that Johnson employed them. There was nothing new to connect Johnson with the establishments of Creighton, Hartigan and other co-defendants.

For this year Clifford, in summing up for the Government, relies almost entirely upon his conclusion, without proof, that the Lawrence Avenue Currency Exchange was an agency established by Johnson to service the gambling houses and that all gambling house transactions with this exchange represented income of Johnson. (III. R. 754.) The testimony of Bagshaw that Brown referred to the Reserve for Uncollected Funds account on the books of the exchange as the "Johnson account" (II. R. 536, 537) was hearsay. If the reference was to defendant Johnson it fell far short of proving that the account belonged to defendant Johnson, if it had been competent for any purpose. Bagshaw admitted that he did not know and had never seen defendant Johnson before the trial (II. R. 540) and that no first name was used by Brown in referring to this account (II. R. 542) and that he had no knowledge that defendant Johnson was connected with the exchange or the account. (II. R. 543-544.) Assuming any credit can be given to the testimony of Brandt and Koop that they saw Johnson in the exchange a couple of times, (III. R. 591, 603,) what does it prove? They saw hundreds of people in the exchange and there is just as much basis for the assumption that any patron of the exchange was its owner as there is that Johnson was the owner. All the

direct evidence,—Johnson's testimony (III. R. 952), and Brown's testimony before the grand jury which was read into the record by the Government (III. R. 674-675),—shows that Johnson had no interest in or connection with the Lawrence Avenue Currency Exchange. The prosecution is bound by Brown's testimony. *Young v. United States*, 97 Fed. (2nd) 200, 202; *State v. Darrab*, 60 Idaho 479; *State v. Hernandez*, 36 N. Mex. 35; *Spicer v. State*, 112 Tex. Cr. App. 616.

Notwithstanding this state of the record, the sum total of the proceeds of checks cashed and currency exchanged by co-defendant Sommers and others at the Lawrence Avenue Currency Exchange in 1939, aggregating, as Clifford figured, (III. R. 754,) \$886,499.30, was called Johnson's income. There were also included in Johnson's income \$40,000, representing the total in worn bills exchanged over an eight-month period for new working money by Sommers, and \$40,000, representing proceeds from checks cashed by Creighton at another exchange over a period of several months. (III. R. 754.) There was no proof of the *amount* of money actually involved in these transactions, and no proof that any of it was profit to anyone. Without proof of the steps necessary to arrive at the conclusion that Johnson had an income of nearly \$1,000,000 in 1939, the Government assumed that he owned the gambling houses named in the indictment and in the evidence, that some or all of these gambling houses made a profit, that the aggregate of the currency exchange transactions was the amount of the profits, that Johnson received this profit, and that it was all income taxable to Johnson. *This was mere guessing. Not a dollar of this money was traced into Johnson's hands.* If this is not the process of reasoning which the courts condemn, then we do not know what they mean when they say that presumption cannot be piled upon presumption and inference drawn from in-

ference and deduction be made to take the place of proof. *Symonette v. United States*, 47 Fed. (2nd) 686.

As was said in *Benn v. United States*, 21 Fed. (2nd) 962, at 963:

"It is highly important, of course, that this and all other criminal laws should be strictly enforced, but it is of far greater importance that a citizen should not be imprisoned and deprived of his liberty under a judgment based on no surer foundation than mere guesswork and speculation. This rule is elementary."

Coming to the expenditure theory for 1939 we find the Government discarding its theory that Johnson had an income in 1936, 1937 and 1938 grossly in excess of the sum reported by him. If Johnson had nearly a million-dollar income in 1938, as the Government contends under its gambling house proprietorship theory, then he had abundant funds to meet the expenditures which the Government claims he made in 1939. In their attempt to conceal their dilemma, Government counsel, as we have shown, entirely ignore the annual periods fixed by the Internal Revenue Act for reporting of income. Taking the year 1939, there is no proof in this record that Johnson spent more money in that year than he had available for expenditure. Johnson reported for 1939 an income of \$268,-885.98 and the Government claims that he spent in that year \$347,469.32. We have demonstrated that the latter figure is incorrect, but, assuming for the sake of argument that it is correct, where is the proof in this record that Johnson did not have at the beginning of 1939 cash available to meet these expenditures? If the Government's contention that Johnson had an income in 1938 of \$935,-353.80 is true and if its contention that Johnson spent \$553,561.32 is conceded, then, according to the Government's own figures, Johnson had an excess of income over

expenditures in 1938 of \$380,000, or more than it is claimed he spent in 1939. Even if Government counsel abandon their theory of income from gambling houses, their argument under their expenditure theory must fail for 1939 if they persist in contending that the proof shows under the expenditure theory that Johnson had a greater income in 1938 than he reported. There is no showing of the amount of this alleged unreported income of Johnson for 1938 and so Government counsel have by their contention as to 1938 destroyed all basis for their argument for 1939 on any expenditure theory. Without belaboring the point, we submit that the Government's theories simply will not hang together. The Government did not prove, as to this year or any other involved, that Johnson did not have cash receipts during the period following 1931 which he was not required to report. There was no proof of net worth in any year. There was a total failure of proof on the expenditure theory for 1939, as there was for each of the other years, that Johnson had a taxable income which he failed to report.

A verdict of not guilty should have been directed as to the fourth count of the indictment. There was no competent evidence to support the conclusion that Johnson owed a tax for 1939.

As to Count 5—Conspiracy.

We submit that an examination of this record will show that there is no competent evidence of a conspiracy to defraud the United States of income taxes due from defendant Johnson. All of the direct evidence is to the effect that none of the co-defendants had any knowledge of Johnson's income or of the records kept by him, or of his failure to keep records, or of his income tax reports and that the subject of his income was never discussed by Johnson with any co-defendant. (III. R. 819-820, 862.

879, 939, 960.) There is no direct evidence to the contrary. The case for the prosecution rests entirely on deduction from a mass of disconnected acts, transactions and declarations. It is an effort to supply the place of evidence by piling inference upon inference. *United States v. Glasser*, 62 Sup. Ct. 457; *Symonette v. United States*, 47 Fed. (2nd) 686.

The language of Judge Hutcheson in *Symonette v. United States*, *supra*, so aptly describes the case at bar that we adopt it (p. 687):

"This is one of those cases, of which the books contain too many instances, of an effort by the government, on a conspiracy indictment, to supply the place of testimony by piling inference upon inference; of an effort to make deduction take the place of proof; and to have the jury, by reasoning backward from non-criminal acts, build up by inference a state of facts to make them criminal, which, if they in fact exist, the evidence ought to have established."

We recognize that a conspiracy may be proved by circumstantial evidence, but it is well established that where the evidence leaves the essential element of an unlawful agreement open to conjecture a verdict for the defendant should be directed. (*United States v. Ross*, 92 U. S. 281, 284; *Mackett v. United States*, 90 Fed. (2nd) 462, 464; *Dowdy v. United States*, 46 Fed. (2nd) 417, 423; *Linde v. United States*, 13 Fed. (2nd) 59, 61.) The existence of a conspiracy cannot be established against an alleged co-conspirator by evidence of acts or declarations of other alleged co-conspirators done or made in his absence. (*Thomas v. United States*, 57 Fed. (2nd) 1039, 1042; *Minner v. United States*, 57 Fed. (2nd) 506, 511; *Haager v. United States*, 173 Fed. 54, 57.) The Government has not pointed out the evidence which it claims establishes the conspiracy

which opens the door for the admission of what would otherwise be hearsay.

This record contains hearsay evidence of conversations and acts and transactions running back into the 20's, over ten years before the year of the first substantive offense charged in the indictment. The whole course of the prosecution was to lift itself over the fence by its own boot straps. (*United States v. Glasser*, 62 Sup. Ct. 457, 467.) It used the acts and declarations of the various defendants done or made outside the presence of other defendants to establish the existence of a conspiracy, and at the same time used the theory of a going conspiracy to make proof of the same acts or declarations by alleged conspirators, done or made out of the presence of alleged co-conspirators, competent evidence against all of the defendants. This was clearly error. Before the declarations of alleged co-conspirators can be received in evidence against one charged with participation in a conspiracy, it must be shown by *independent* evidence that the conspiracy existed and that the accused was a party to it at the time the declarations were made. *Logan v. United States*, 144 U. S. 263, 308; *Mayola v. United States*, 71 Fed. (2nd) 65, 67; *Nibbelink v. United States*, 66 Fed. (2nd) 178, 179; *Feigenbutz v. United States*, 65 Fed. (2nd) 122, 125; *United States v. Renda*, 56 Fed. (2nd) 601, 602; *Pope v. United States*, 289 Fed. 312, 315; *Stager v. United States*, 233 Fed. 510, 513.

There was proof that all of the defendants were professional gamblers and that occasionally they were associated in undertakings in the gambling field. But the mere fact that men are associated in an enterprise, even if it be illegal, is not proof, without more, that a specifically alleged conspiracy exists and that each is a member of that conspiracy. *Wiborg v. United States*, 163 U. S. 632, 659;

United States v. Falcone, 109 Fed. (2nd) 579, 581; *Dowdy v. United States*, 46 Fed. (2nd) 417, 423.

Even if the evidence showed that one or more of the co-defendants knew that Johnson was filing false income tax returns and was attempting to evade the payment of the income tax due from him, which it does not, this would not of itself establish the alleged conspiracy. Mere knowledge of or acquiescence in an illegal act of another, without an agreement to cooperate to accomplish the object of the actor, is not enough to constitute one a party to a conspiracy with him. *Nations v. United States*, 52 Fed. (2nd) 97, 105; *Thomas v. United States*, 57 Fed. (2nd) 1039, 1042; *United States v. Peoni*, 100 Fed. (2nd) 401, 403.

Considering all of the proved facts and circumstances, in the light most favorable to the prosecution, there is still a lack of substantial evidence which excludes every hypothesis but that of guilt. The defendant Johnson did not exercise his privilege of silence and leave the circumstances unexplained. He took the stand and told a straightforward story of his activities as a professional gambler and of his efforts to comply with the income tax law long before others who were engaged in illegal pursuits filed returns and paid taxes. This is not the character of case usually presented to the courts where the accused has followed a course of living indicating a large income, and has filed no return or a return of a small amount, and then, when faced with a prosecution for violation of the income tax law, has hidden behind his privilege of silence and refused to make explanation of his course of conduct. Defendant Johnson has filed returns regularly for twenty years and has paid annually a tax on a very large income. The circumstantial evidence must be weighed in the light of these facts and in the light of Johnson's good reputation for truth, honesty and fair dealing. Viewed in this

light we think it must be held that the evidence for the prosecution is as consistent with innocence as with guilt and that this judgment of conviction under the fifth count cannot be sustained.

On the grounds urged under this division of our brief, the judgment of the Circuit Court of Appeals should be affirmed. There is a failure of proof as to each count of the indictment.

IV.

This defendant was denied a fair trial. Prejudicial error was committed in permitting Agent Clifford to express improper conclusions, in overruling defendant's objections to the admission of evidence, in permitting improper cross-examination of this defendant and his co-defendants, in refusal of defendant's requested instructions, and in sending with the jury on retirement exhibits containing prejudicial matter. The motion for mistrial should have been granted.

If this Honorable Court concludes that the judgment of the Circuit Court of Appeals should be affirmed on any of the grounds argued under the first three divisions of our brief, then it will be unnecessary to consider the errors on the trial. We argue some of the more serious errors here to show this Court that justice will not permit this judgment of conviction to stand, though this Court conclude that this defendant is not entitled to his discharge on this record. Fundamental rights of this defendant were invaded and he was denied a trial in accordance with law and justice.

This Court said at this term in *Glasser v. United States*, 62 Sup. Ct. 457, at 463:

"In all cases the constitutional safeguards are to be jealously preserved for the benefit of the accused, but

especially is this true where the scales of justice may be delicately poised between guilt and innocence. Then error, which under some circumstances would not be ground for reversal, cannot be brushed aside as immaterial since there is a real chance that it might have provided the slight impetus which swung the scales toward guilt."

A. Agent Clifford was permitted to weigh the evidence and express his conclusion on the ultimate questions to be decided by the jury. The hypothetical questions asked submitted to this expert the competency of evidence and the credibility of witnesses.

Frank J. Clifford, a Government agent who qualified as an accountant, testified to the conclusions that defendant Johnson had a net taxable income for the years 1936, 1937, 1938 and 1939 in excess of that which he reported. It will appear from an examination of the testimony of this witness (IV. R. 13-18) that he *weighed* all the evidence in the record, that he *determined* the credibility of the witnesses, that he *accepted* the evidence which supported the theory of the prosecution, that he *rejected* the evidence brought out on cross-examination of Government witnesses and the statements of the defendants read into the record by the Government which supported the theory of the defense, and that he *concluded* from this consideration of *all* the evidence that defendant Johnson was guilty, and *expressed this conclusion* to the jury.

Under the most elementary principles established by an unbroken line of authorities it was clearly error to permit this Government agent, with the blessing of the trial judge, to decide this case and announce to the jury that the defendant had failed to report all his taxable income and had evaded payment of income tax as charged in the indictment. *U. S. v. Spaulding*, 293 U. S. 498, 506; *Dexter v. Hall*, 82

U. S. 9, 26; *United States v. Stephens*, 73 Fed. (2nd) 695, 704; *Wilkes v. United States*, 80 Fed. (2nd) 285, 291; *United States v. Cole*, 82 Fed. (2nd) 655, 657.

Again Government counsel seek to meet this gross invasion of the defendant's constitutional right to a trial by jury by asserting that we object to mere matter of form, and they indulge in a long dissertation, based largely on Professor Wigmore's criticism of this Court's decision in the *Spaulding* case, on the academic question of whether an "expert" witness can usurp the jury's function of deciding the issues of fact. (Their brief, 54-57.) Our objection goes much deeper. If this witness had been asked merely to make a computation of amounts from the facts in evidence, we agree that the mere form of the questions might have been immaterial. Clifford was not asked to state the amount of the financial transactions with respect to each gambling establishment in each year and then the total for all the gambling establishments for each year. *He was asked to state how much income defendant Johnson received in each year.* When the Court permitted Clifford to state this conclusion, and the conclusion stated exceeded by several hundred thousand dollars the amount Johnson had reported in the respective years involved, the Court in effect told the jury that the aggregate of the financial transactions of the operators of the several gambling houses was taxable income of defendant Johnson and left the jury no choice but to return a verdict of guilty.

The enumeration of a lot of exhibits by the prosecutor (IV. R. 13) was mere scenery. The question as to each year was so concluded (IV. R. 15-18) that the "expert" was asked to weigh *all* the evidence in the record and to determine the amount of taxable income of defendant Johnson for each of the years involved. Many of the exhibits identified related only to expenditures, but no questions were directed to Clifford by the prosecutor to bring out the

amount of expenditures by Johnson for the years 1936, 1937, 1938 and 1939 respectively. He was merely asked to lump the total of expenditures for the period 1932 to 1939 inclusive, (IV. R. 14,) without regard to the annual basis of reporting taxable income provided by the Internal Revenue Act. Thus it is clear that Clifford made no reference to the exhibits enumerated when he stated that Johnson's income for 1936 was \$547,942.38. As we show, his answer was just guesswork.

It is a new thought that the errors of the trial judge in overruling objections to manifestly improper and prejudicial questions can be cured by cross-examination. (Government brief, 58.) It is true that the cross-examination developed that Clifford's answers were based on assumption piled on assumption, but this did not cure the Court's error in letting Clifford decide the case against defendants in the first instance. Perhaps the cross-examination emphasized the instruction of the Court to the jury, implicit in his overruling of the objections to the questions put to Clifford on direct examination, that Clifford was right in assuming that the aggregate of the financial transactions of the several co-defendants was in fact the taxable income of defendant Johnson. No amount of argument can change the fact that the Court by its action substituted trial by a Government agent for trial by jury.

It was for the jury to decide the amount of Johnson's income in 1936 and the other years involved after consideration of all the evidence, that for the defense as well as for the prosecution. Before the jury could reach the conclusion that the banking and currency exchange transactions should be considered in determining the amount of Johnson's income, it had to decide whether there was evidence justifying the conclusion that Sommers, Creighton, Flanagan, Kelly, Hartigan, Wait and Mackay were mere employees of Johnson and that all of the money handled

by them in these transactions represented taxable income of defendant Johnson. There was no problem here for an accountant. While it may have been proper to have some person, who had a sixth grade education and could add a column of figures, state the total of the financial transactions with which the several co-defendants were identified, an accountant could not be of any service to the jury in determining whether new money was involved in the several transactions so that the total was an amount of proceeds of the business, or whether the same bankroll was turned over weekly in the normal course of operating the business. Nor could an accountant aid the jury in determining whether the several gambling house operators were employees of Johnson, nor whether any net profit resulted from the operation of any of these gambling houses, nor whether Johnson received as income any of the proceeds of the numerous banking and currency exchange transactions. These questions could be determined only by considering all the facts and circumstances in evidence and by weighing the testimony of scores of witnesses, including the credit to be given the testimony of witnesses in the light of facts brought out on cross-examination. A question which submits these matters to an expert witness invades the province of the jury. *United States v. Stephens*, 73 Fed. (2nd) 695, 703; *Dexter v. Hall*, 82 U. S. 9, 26; *United States v. Spaulding*, 293 U. S. 498, 506.

Government counsel say, "The alleged vice in Clifford's testimony is that it attributed to Johnson items of income on which the evidence was conflicting." (Their brief, 56). We have not made and do not make any such contention. We contend that Clifford made assumptions in arriving at his conclusion which are supported by no evidence. Whatever else he did, he did not make a mere computation of figures in evidence to arrive at a total. He went a step further and testified, with the approval of the trial judge, that the total he announced was taxable income

of defendant Johnson. *It is this second step which invades the province of the jury.*

Government counsel say further that "Clifford, in making his computation, has assumed facts constituting the Government's theory of the case." (Their brief, 56). Clifford did more than assume facts; he weighed the evidence, circumstantial as well as direct, and then stated his conclusion as to what the evidence proved. He did not confine his conclusion to the statement of an amount; he said this amount of money was taxable income of this defendant. This was the very question the jury were called upon to decide.

Trial counsel for defendant is complimented by the claim of Government counsel that his cross-examination cured the errors of the trial court in permitting Clifford to answer the questions propounded to him by the prosecuting attorney. In the estimate of Government counsel, it must have been a powerful cross-examination. They ascribe to it a potency which trial counsel never thought it had. If this cross-examination cured the errors assigned, then there is no error which a trial judge can commit on ruling on objections to questions put in direct examination which cannot be cured by cross-examination. The overruling of objections to improper questions forces trial counsel for defendant to make a choice between letting answers to such questions stand unchallenged or attempting to soften the effect of the improper answers by cross-examination.

Clifford did not take into consideration the amount of expenditures of defendant Johnson for the respective years in making his answers as to the total of Johnson's taxable income for said years. His conclusion as to the amount of defendant Johnson's income for the respective years results from his assumption that Johnson was the owner of all the gambling houses, added to the assumption

that there was net income from these gambling houses, added to the assumption that the aggregate of checks cashed and currency exchanged represented the amount of such income, added to the assumption that this total amount was paid to Johnson, added to the assumption that this represented taxable income of Johnson. This piling of assumption on assumption is squarely within the condemnation of *United States v. Ross*, 92 U. S. 281, 283, *Mackett v. United States*, 90 Fed. (2nd) 462, 464, *Symonette v. United States*, 47 Fed. (2nd) 686, 688, *Dowdy v. United States*, 46 Fed. (2nd) 417, 423, *Benn v. United States*, 21 Fed. (2nd) 962, 963, and *Linde v. United States*, 13 Fed. (2nd) 59, 61. Even a jury is not permitted under the law established by the decisions to make such assumptions, much less a Government agent substituting for the jury.

Just as startling as his statement of conclusions as to Johnson's income from the operation of gambling houses for the several years is Clifford's piling up of expenditures. In answering the question as to the total of Johnson's expenditures, Clifford *weighed* all of the testimony in the record, *accepted* the testimony which suited his purpose, *rejected* the testimony which did not appeal to him, and then *announced* to the jury the result of his mental gyrations. In the course of arriving at his conclusions he decided that William Goldstein told the truth on his direct examination and he brushed aside Goldstein's admissions on cross-examination that he had lied about the ownership of the property at 9730 South Western Avenue and his admission that he might be mistaken about the ownership of The Dells. Clifford also ignored the testimony of architect Nadherny that Skidmore and not Johnson had paid for the erection of the building on Western Avenue and he nonchalantly added the cost of this building to Johnson's expenditures. (III. R. 746.) Without any evidence to support the conclusion, except the inference from the

testimony of Goldstein, who put the title in Johnson's name, and his own recollection that Johnson told him that he owned Bon-Air, Clifford concluded that *all* expenditures made in connection with acquiring and improving the Bon-Air Country Club were made by Johnson. (III. R. 747, 758.) He ignored Nadherny's testimony that Skidmore paid part of the architect's fee and other circumstances developed by cross-examination which showed Skidmore's interest in Bon-Air. (III. R. 750.) Clifford ignored the fact that Goldstein was testifying to save his own skin (II. R. 65) and had shown himself to be wholly unworthy of belief, (compare II. R. 56, 59, with II. R. 64, 66,) and accepted all of his testimony on direct examination at face value and built substantially all his conclusions about Johnson's expenditures upon this slimy shifting foundation.

It seems to us an inescapable conclusion that the error of permitting this Government accountant to invade the province of the jury to the extent shown by the record must reverse the judgment. We submit that the Circuit Court of Appeals was right in holding "that the testimony of this witness, going to the very heart of the controverted issue and invading the province of the jury as it did, was so prejudicial and damaging that it alone would require a reversal of the judgment." (I. R. 200.) On oral argument before the Circuit Court of Appeals, Government counsel admitted that the only question left for the jury after Clifford had testified was whether Clifford had told the truth.

B. The evidence of the financial transactions of the co-defendants was hearsay as to Johnson and highly prejudicial. It furnishes the sole basis for the amount charged.

Most damaging of the evidence received against defendant Johnson was that of numerous banking and currency exchange transactions by co-defendants without any evi-

dence connecting Johnson with such transactions. (Assignments 16(y)-16(cc), III. R. 1046.) The transactions of Sommers at the Northern Trust Company will serve to illustrate the point. It was proved that Sommers came to the bank two or three times a week from 1936 to 1939 and cashed several checks at each visit. These transactions totalled several thousand dollars a year. But there was no proof that a group of checks totalling \$3,000 cashed one day did not represent the same money which Sommers received in the cashing of a group of checks a few days earlier. There is as much reason to assume that the cashing of checks every few days represented a turn-over of the same money as there is to assume that the proceeds of the different batches of checks cashed represented new money. None of the proceeds of these checks were deposited. The currency was carried away by Sommers. It was also proved that about eighteen times a year Sommers would bring in a bundle of worn currency averaging about \$5,000 and exchange this for new currency, taking about \$3,000 in \$5 bills and about \$2,000 in \$20 bills or \$100 bills. The undisputed evidence is that this was working money,—bills used for dealing at the craps tables. The tellers were unable to say whether the currency exchanged represented one bankroll exchanged eighteen times, and, therefore, involved only \$5,000, or whether it represented new money each time, and so totalled \$90,000 a year. None of the currency was deposited.

There was no proof of a total of money accumulated by anyone. It may well be, though the exchanging of currency and the cashing of checks represented an aggregate of \$500,000 in transactions in a year, that there was only \$10,000 involved, which was turned over once a week or fifty times during that year. There was no proof that defendant Johnson had any connection with any of these transactions or that a dollar of the money ever reached him. There was no proof that the money involved in

the transactions represented income of Sommers, much less that it was income of Johnson. Notwithstanding the absence of proof to establish the *amount* of money involved in these transactions, and the absence of proof that any of the money involved represented profits from any business, and the absence of proof that Johnson had any connection whatever with these transactions, and the absence of proof that Johnson ever received any of the money, the Court received the evidence against Johnson as proof of the amount of income received by him in the aggregate of all the transactions.

It has been held that the mere fact that a *defendant* had transactions involving large sums of money would not prove that all the money handled was taxable income, (*Gleckman v. United States*, 80 Fed. (2nd) 394; *Pascheu v. United States*, 70 Fed. (2nd) 491, 497; *Oliver v. United States*, 54 Fed. (2nd) 48, 50,) and we are certain that it has never been held that the proof of transactions of *another* involving large sums of money, even where it is shown that that other is an employee of defendant, is proof that the money belonged to the defendant, or that the total of the transactions was taxable income of the defendant. Such double inferences are too remote to constitute evidence. *Heaton v. United States*, 280 Fed. 697, 699; *Nations v. United States*, 52 Fed. (2nd) 97, 105.

An aggregate of about a half million dollars of income charged to defendant Johnson was based on the testimony of Agent Lawrason who summarized a lot of checks cashed by co-defendant Creighton at the Mid-City National Bank from his examination through a magnifying projector of Recordak films which he said showed these checks. (Assignments 50-51, III. R. 1060.) There was no foundation laid for Lawrason's assumption that checks were always in the same order when fronts and backs were photographed, nor that the photographing was ac-

curately and competently done. To have cross-examined Lawrason fully with respect to his summarizing of these Creighton checks would have taken at least a week or two, and obviously the defendants would not have dared to so impose on the jury. It is elementary that a witness cannot be permitted to summarize documents which are not produced in court for use of the opponent in cross examination. (*Wilkes v. United States*, 80 Fed. (2nd) 285, 291; *Greenbaum v. United States*, 80 Fed. (2nd) 113, 120.) To present a document that is not legible is the same as not presenting it at all. The constitutional right of this defendant to be confronted by the witnesses was denied to him by permitting these boxes containing several hundred Recordak films to be received in evidence and permitting Lawrason to summarize them. It was held in *Terry v. State*, 21 Ala. App. 100, that a deaf defendant was not confronted by witnesses within the meaning of the Constitution when no interpreter was provided to translate to him what the witnesses were saying from the witness stand. In *People v. Clark*, 301 Ill. 428, 433, it was held that the comparing of hand writing outside the presence of the defendant was an invasion of his constitutional right. In principle these cases support our point. In the situation at bar the result would have been exactly the same if Lawrason had come to the stand and testified that he went to the bank and examined a few thousand checks and found among them Creighton's checks totalling so much, without producing any of the checks in court. This hearsay testimony of Lawrason was prejudicial.

Over the objection of this defendant, Bagshaw was permitted to testify that he set up on the books of the Lawrence Avenue Currency Exchange a "Reserve for Un-collected Funds" account and that the transactions in this account amounted to more than a million dollars during the year the exchange operated and that Brown

referred to this account as the "Johnson" account. (II. R. 535-536; Assignments 16(w), 29(i), 38; III. R. 1046, 1051, 1054.) If in referring to this account as the "Johnson" account Brown was referring to defendant Johnson, then the testimony of Bagshaw was clearly hearsay. (*McWhorter v. United States*, 281 Fed. 119, 122; *Poole v. United States*, 97 Fed. (2nd) 423, 425.) If Brown was not referring to the defendant Johnson, but to some other person or to some corporation, then the testimony was immaterial. Bagshaw testified that he had never seen defendant Johnson prior to the trial and had never had any transactions with him and that his name did not appear on the records of the exchange. (II. R. 542-544.) Brown's testimony before the grand jury to the effect that defendant Johnson had no connection with the exchange and no interest in any of the transactions of the exchange (III. R. 674-675) was read to the jury by the Government, was uncontradicted, and was binding on the Government. Under no theory of the law of evidence was this testimony relating to the years 1938 and 1939 properly received as to the third or fourth counts of this indictment. Even under the fifth count, the statement was not an act in furtherance of the alleged object, (*United States v. Nardone*, 106 Fed. (2nd) 41, 43; *Mayola v. United States*, 71 Fed. (2nd) 65, 67; *Oras v. United States*, 67 Fed. (2nd) 463, 465,) but was a revelation of the scheme to a stranger and tended to defeat the secrecy essential to its success. Notwithstanding there was no proof that any of this money was profit to anyone or that Johnson ever received a dollar of it, this testimony was received as proof that the turn-over of a million dollars represented by the transactions in this account was part of Johnson's income in the years 1938 and 1939.

This evidence of financial transactions of others was rank hearsay as to Johnson. This hearsay evidence is the sole basis of the amount of Johnson's income as com-

puted by Clifford. We submit its admission against Johnson must reverse the judgment.

C. Prejudicial hearsay evidence was received against Johnson on the question of ownership of the gambling houses.

Now let us look at the evidence which the prosecution claims shows that defendant Johnson was the *sole* owner of the gambling houses operated by the other defendants.

There were dumped into the hopper five Nationwide News Service books, each containing more than one thousand separate customers' accounts. (Assignment 30, III. R. 1051-1052.) Not a single one of these accounts was identified with defendant Johnson and yet several of them contained prejudicial entries which might or might not have referred to defendant Johnson, and which the jury was left to guess did refer to him. There was no attempt to prove that these entries were made by co-conspirators, much less that they were made in furtherance of the alleged common object. There was in the 1934 book (Gov. Ex. 0-11) an account headed "W. Johnson, 162 North State St., Room 611", but there is no proof in the record indicating that this defendant was ever located at that address, or that this account refers to this defendant. In the 1935 book (Gov. Ex. 0-12) there is an account headed "Lincoln Tavern, Dempster St. near Lincoln", and across the corner of this ledger sheet is written in ink, "To Bill Johnson's book". No witness testified who wrote this casual memorandum on this ledger sheet, or when it was written, or what it meant. No one identified the account as having any relation to this defendant or any business with which he was connected. The jury was left to speculate when this entry was made, who made it, what was meant by it, and whether it referred to this defendant. In the same book was another sheet headed, "Mead, 6825 Milwaukee Ave." and the

same notation was written across the corner of this sheet. In the 1936 and 1937 books (Gov. Ex. 0-13 and 0-14) was an account headed, "Flanagan (Bill Johnson) 2141 So. Crawford Ave." There was proof in the record that co-defendant Flanagan operated a gambling house at 2141 South Crawford (now Pulaski), but there was no proof that the parenthetical statement on this account referred to defendant Johnson, nor was there any proof that defendant Johnson had any connection with this address except that he owned the building and leased it to Flanagan. If speculation is to be indulged in, then we may guess that the "Bill Johnson" was put after "Flanagan" to identify the customer as the Flanagan who leased Johnson's building. There might be many guesses made as to the meaning and purpose of the parenthesis. In the 1937 book was also an account headed "Bon-Air Country Club, Sikokis No. 2". The jury was left to speculate whether Johnson was interested in this account notwithstanding the proof showed that he did not become connected with Bon-Air Country Club until 1938. In the 1938 book was an account headed, "Red Creighton, 6245 Cottage Grove 2nd", and across this account was written with a red pencil the name "Johnson". Who wrote this casual memorandum, when it was written, and whether it referred to this defendant was not proved. In the 1939 book (Gov. Ex. 0-15) was an account headed, "W. Johnson, 1651 E. 53rd St., first", but again the jury was left to speculate whether that account belonged to defendant Johnson. In the same book was an account headed, "W. Kelly, 1023 E. 43rd St.", and attached to it was a tab on which was written "ck sined Wm.J.", and the jury was left to speculate whether the account belonged to co-defendant Kelly and whether the notation on the tab meant that a check for service charges covering this account was signed "Wm. J. Kelly", or whether it was signed "Wm. Johnson", or whether it was in any other

way identified with any of the defendants. No doubt the jury knew that these books were Annenberg racing service books, but the jury was left to speculate what, if anything, the books proved in this case. The fact that these voluminous account books were offered and received in evidence justified the jury in believing that the Court believed that the accounts recorded had some connection with the case against this defendant but the jury was left to guess which accounts, if any, were identified with him and what the casual memoranda on some of the accounts meant. Under well established rules of evidence these accounts were improperly received. *United States v. Dressler*, 112 Fed. (2nd) 972, 975-981; *Morris v. Davis*, (Tex. Civ. Ap.), 3 S. W. (2nd) 109; *Harrison v. United States*, 200 Fed. 662, 673-674; *Nicola v. United States*, 72 Fed. (2nd) 780, 783; *Singer v. United States*, 58 Fed. (2nd) 74, 76.

A great quantity of Illinois Bell Telephone Company records relating to telephone service furnished by Flanagan to the customers of his service bureau and to telephone services of other co-defendants in their respective gambling houses was received in evidence against defendant Johnson, together with elaborate explanations of what they recorded. (II. R. 195-205, 208-215, III R. 697-704.) In no instance was there any proof that Johnson had any connection with these services. There was also received in evidence a map of Chicago and vicinity (Gov. Ex. 0-1) on which were placed thumb tacks showing the location of various gambling houses and this map was used in connection with the explanation of the telephone services rendered to the establishments indicated. (II. R. 11, 197.) There was no direct evidence that defendant Johnson had any connection with these various establishments, but there was an assumption throughout the trial that the chart pictured a chain of gambling houses operated by this defendant. The O'Neil testimony and records relative to the

delivery of bookmakers' supplies to some Morgan on Milwaukee Avenue (III. R. 729-732) were the basis of some of the conjecture in which the prosecutors indulged in picturing a chain of gambling houses operated as a unit.

The Court received these records on the theory that the statute (Sec. 695, Title 28, U.S.C.) removed the requirements to identify a record with a defendant and to otherwise establish its trustworthiness as evidence. (II. R. 167, 168, III. R. 1004.) This is directly contrary to well reasoned decisions respecting State statutes identical, in substance, with the Federal statute. (*Johnson v. Lutz*, 253 N.Y. 124, 170 N.E. 517, 518; *Kelly v. Ford Motor Co.*, 280 Mich. 378, 273 N.W. 737, 741; *Kelly v. Crawford*, 112 Wis. 368, 88 N.W. 296, 297.) The admission of all these accounts and the deductions therefrom against Johnson was error which should reverse the judgment, if the record were otherwise free from error. A fair trial was impossible when such hearsay was received in documentary form.

There were also received in evidence testimony and exhibits relating to storage of furniture and gambling paraphernalia belonging to certain named co-defendants, to transfer of furniture and gambling paraphernalia from one location to another, and to bus services from and to certain gambling houses. (II. R. 265-266, 270-271, 272, 306-308.) Mechanics who performed construction and repair work for various gambling establishments were permitted to testify in great detail concerning the services performed and the work done. (II. R. 128-131, 135, 235-240, 336-337.) None of these witnesses had any dealings with Johnson and there was no proof that Johnson paid for the services or received the benefit of them. The jury was left to speculate about the connection of Johnson with all of this work. Apparently it was assumed by the prosecution that because the same workmen performed services at several different establishments operated by co-defendants there must be

a common owner and that this owner was defendant Johnson. This was mere conjecture and was unsupported by proof.

What the Court said in *Sorenson v. United States*, 168 Fed. 785, is particularly applicable to this great mass of detail which threw no light on the question of whether Johnson failed to return all his income and which served only to confuse: (pp. 799-800)

"A proper analysis of the pronouncements of courts favoring the admissibility of isolated instances of an inculpatory character, and the advisability of not excluding each disjunct part merely because of its insufficiency to justify a conviction, will disclose that the parts held to be admissible come within the range of legal competency, according to established rules of evidence as applied to the special facts and circumstances of the particular case. But they do not imply that mere suspicion is the equivalent of proof, or that mere hearsay testimony may be resorted to, or that unrelated, incompetent incidents and circumstances may become admissible because of the number of them. In law as in mathematics the multiplication of 0 by 2 does not make 1. In other words, a piece of evidence, which in and of itself is incompetent under settled rules of law, cannot be rendered admissible by attempting to link it up with some other fact or circumstance that might be competent. Otherwise, it is made possible to augment 1 by the mathematical absurdity of attempting to add to it 0."

D. Johnson was prejudiced by a mass of evidence relating to acts of other defendants wholly unconnected with him.

Individual income tax returns of various co-defendants were received in evidence against defendant Johnson. (Gov. Ex. R-14 to R-19, R-24 to R-28, R-35 to R-42, R-44 to R-49,

R-52 to R-57, R-58 to R-64, R-81 to R-85, R-108; Assignments 17-18, III. R. 1047-1048.) Government agents were permitted to testify to statements made by the various co-defendants about their individual returns, (III. R. 706, 767-772) and to relate their difficulties in locating some of the co-defendants. (III. R. 739, 777-781.) The receipt of this evidence was highly prejudicial to defendant Johnson. Great emphasis was placed on these returns and conversations relating to them. Apparently this mass of evidence was received against Johnson on the theory that the individual operators of the gambling houses could not have conducted their establishments, which involved large financial transactions, without making more profit than was indicated by their individual returns, and that therefore some person of larger income must have been receiving profits from the various establishments operated by co-defendants, and that Johnson had over a long period of time made returns showing large profits from gambling and that therefore he must be the owner of these gambling establishments, and must be making more profits than he was reporting. Especially damaging to Johnson were the entries on these blanks and the testimony of the accountants indicating that the taxpayers were employees of someone and that their incomes were salaries or commissions paid and not profits from a business of their own. All of the deductions drawn from these returns were highly speculative and the result of pure conjecture. It was substitution of deduction for proof with a vengeance. The Court erred in receiving the exhibits in evidence and the testimony with respect thereto and erred in refusing the instructions directing the jury not to consider them as against defendant Johnson. (Assignments 19-22, III. R. 1048-1049.) Under the Court's rulings Johnson was put on trial for the omissions and commissions of all the co-defendants with respect to their own returns from 1932 to the time of the trial. These returns and the acts and declarations of the several

taxpayers in connection with the making, filing and auditing of the returns were hearsay as to defendant Johnson. *Greenbaum v. United States*, 80 Fed. (2nd) 113, 125; *For v. United States*, 45 Fed. (2nd) 364, 365; *Brown v. United States*, 298 Fed. 428, 430.

Co-defendants, on cross-examination, testified to the destruction of records and files in their respective gambling houses (III. R. 826, 873, 886, 939-940; Assignment 24, III. R. 1049) and there were also received in evidence the grand jury testimony of co-defendant Brown and the testimony of Clifford with respect to the destruction of the records of the Lawrence Avenue Currency Exchange. (III. R. 628, 641, 739.) No proof was received that Johnson had any knowledge of these records or their destruction. The evidence was rank hearsay and was highly prejudicial to this defendant. It is difficult to conceive of evidence more likely to inflame the minds of the jury against a defendant in a case of this character. *Bryan v. United States*, 17 Fed. (2nd) 741, 742.

Especially damaging to defendant Johnson was the grand jury testimony of Brown, (Gov. Ex. 0-211,) read to the jury (III. R. 614-692) and sent to the jury room. (III. R. 1023.) Throughout the inquisition are the insinuations or statements of the three prosecutors, Campbell, Plunkett and Miller who were present, that Johnson was in some conspiracy with Brown and other co-defendants. For instance, there were the assumption that Johnson operated a gambling house at 4020 Ogden at some time prior to 1932, (III. R. 619,) the statement of prosecutor Plunkett that Hartigan was a lieutenant of Johnson, (III. R. 686,) and the reference to checks cashed at Brown's exchange as "gamblers' rustled checks," (III. R. 643,) as "checks of suckers who had lost in the gambling houses," (III. R. 647,) and as "checks from outlaw business." (III. R. 652.) Repeatedly, prosecutor Campbell threatened to cite the

witness for contempt. (III. R. 639, 647.) The witness was before the grand jury at six sessions and was so badgered by the three prosecutors that the Court permitted only a portion of the testimony to be read. (III. R. 563-564, 613-614). The prejudicial effect of this hearsay testimony was not cured by the attempt to limit it to *Brown. Whealton v. United States*, 113 Fed. (2nd) 710, 715; *Holt v. United States*, 94 Fed. (2nd) 90, 94.

Government agents were permitted to testify that they made an effort to locate certain witnesses and were unable to contact them, (III. R. 739, 777-780,) and many other witnesses were interrogated about their knowledge of the whereabouts of persons who were not produced by the Government. There was no showing that Johnson had any knowledge of the whereabouts of any of these persons or that he had contacted them or that he had done anything to cause them to conceal themselves. Obviously, this testimony carried the implication that Johnson was responsible for the inability of the Government to locate witnesses and that he was concealing witnesses because their testimony would be damaging to him. This testimony was immaterial and was prejudicial. Such evidence has been repeatedly condemned by the courts. *McWhorter v. United States*, 281 Fed. 119, 120; *People v. Sharp*, 107 N. Y. 427, 14 N. E. 319, 342; *Sunderland v. United States*, 19 Fed. (2nd) 202, 208; *People v. Stanley*, 47 Cal. 113, 118; *United States v. Bucte*, Fed. Case, No. 14680(a).

Scores of witnesses recited the details of the operations of gambling houses by the several co-defendants and related conversations and transactions that took place outside the presence of defendant Johnson. By the receipt of this testimony the case degenerated into one resembling the prosecution of a conspiracy to operate gambling houses and undue emphasis was placed upon the illegal occupation in which defendants were engaged. Certain gamblers

were permitted to relate in detail their experiences at various gambling houses. (Assignment 31, Ill. R. 1052-1053.) Witness Blake told of his large losses at houses operated by co-defendant Creighton and produced checks to support his testimony. Witness Kauders related his gambling experiences at the houses of Sommers and Kelly. Witness Wendt testified to gambling at houses operated by Sommers and told of paying Sommers a \$700 debt, leaving the jury to assume that this was a gambling debt. Witness Rebman told of her career as a gambler and related conversations which she had with gambling house operators outside the presence of defendant Johnson and particularly some with Sommers directly connecting Johnson with the operation of the Horse-Shoe Club. Witness Bissell told of his gambling losses and of transactions involving borrowing of money from co-defendant Sommers and related a telephone conversation between Sommers and another person, who, Bissell said Sommers told him, was defendant Johnson. Witness Van Spankeren told of a suit which his mother-in-law brought against a number of persons including defendant Johnson and co-defendant Sommers and of the negotiations which resulted in the settlement of the suit by Sommers. All of this, which was hearsay as to defendant Johnson, brought into the case the damaging effect of losses at the gambling tables and was immaterial to any issue in the case. Assuming that the conspiracy charged was proved, these acts and declarations were not in furtherance of the alleged object. It is difficult to conceive testimony more prejudicial to a defendant in a case of this character. That its receipt was reversible error seems to us inescapable. *Boyd v. United States*, 142 U. S. 450, 458; *People v. Paisley*, 288 Ill. 310, 324; *Rosencrance v. State*, 33 Wyo. 360.

The receipt of the evidence giving details of the controversy between the Graves and Jackson respecting the

ownership of Harlem Stables, which carried the implication that the defendant Johnson and some of his co-defendants "muscle" the Graves out of their place of business and "robbed" them of fixtures and stock worth \$3500 and then bought them off by paying to them and to former employees \$600 to procure the withdrawal of the complaint filed with the State's Attorney, involved proof which indicated complicity in the commission of other crimes and left the suspicion that Johnson may have bribed the State's Attorney through Graves' lawyer, who was said to be the State's Attorney's cousin. (Assignment 34, III. R. 1054.) How much the Graves had invested in this place of business and what were the merits of their controversy with Jackson were altogether immaterial. (*Coulston v. United States*, 51 Fed. (2nd) 178, 180; *Weil v. United States*, 2 Fed. (2nd) 145, 146.) If any part of this evidence was competent it was only that part which tended to prove Johnson's ownership of Harlem Stables. A half dozen questions and answers would have produced all of this competent evidence. The jury was distracted by the horrid details of the gangster methods described by the Graves and it was impossible to cure the damage done if the Court had been inclined to alleviate the error by instructing the jury on the subject. Instead, the Court gave his approval to the tactics of the Graves by overruling objections to their testimony, (II. R. 284-285, 290,) and by refusing to instruct the jury to disregard the incompetent evidence. The courts have repeatedly condemned receipt of evidence which tends to degrade a defendant and to show his complicity in other crimes. (*Boyd v. United States*, 142 U. S. 450; *Fish v. United States*, 215 Fed. 544, 549; *Crinnian v. United States*, 1 Fed. (2nd) 643, 645; *Smith v. United States*, 10 Fed. (2nd) 787, 788; *Macdonald v. United States*, 264 Fed. 733, 738.) Convictions are reversed where the evidence received is immaterial and prejudicial. After this evidence

was received, the defendant was put to the proof that he was not guilty of robbing the Glaves. The fact that it was established that the Glaves were perjurers (III. R. 804-806, 813, 953) did not remove the damage done by injecting into the case this collateral matter. It is not possible to measure the damaging effect of this immaterial evidence and the presumption is that it influenced the jury against this defendant.

E. The admission of improper evidence prejudiced the rights of this defendant and constituted reversible error in this case.

It cannot be said that the admission of the improper evidence in this case was not prejudicial. An erroneous ruling which relates to the substantial rights of an accused is ground for reversal, unless it affirmatively appears from the whole record that it was not prejudicial. It has been held that a conviction in a criminal case should not be affirmed unless it is made to appear beyond a doubt that the improper evidence admitted did not prejudice the rights of the accused. (*McCandless v. United States*, 298 U. S. 342, 347; *Sprinkle v. United States*, 150 Fed. 56, 59; *Holt v. United States*, 94 Fed. (2nd) 90, 94; *Little v. United States*, 73 Fed. (2nd) 861, 866.) Where improper prejudicial evidence is offered and received, the prosecution will not be permitted to say that it did not influence the jury. Even bad men are entitled to a trial on competent evidence and according to law. *Boyd v. United States*, 142 U. S. 450, 458; *United States v. Dressler*, 112 Fed. (2nd) 972, 977; *Whealton v. United States*, 113 Fed. (2nd) 710, 715; *Singer v. United States*, 58 Fed. (2nd) 74, 77; *Collenger v. United States*, 50 Fed. (2nd) 345, 349.

Specific instructions limiting the use of this hearsay testimony were refused. (Requests 39, 56, 57, 59-72, 73 and 75; III. R. 1028, 1031-1032.) This defendant did not

have a fair trial. Justice demands that a new trial be granted for the errors in the admission of evidence, even if it should be held that the judgment is not reversible on other grounds assigned.

F. The defendants were subjected to improper cross-examination by the prosecuting attorneys and by the Court and this defendant was prejudiced thereby.

During the course of the cross-examination of defendant Johnson by the prosecuting attorney it was repeatedly implied that he bribed public officials for protection of himself and others engaged in operating gambling houses. (III. R. 967, 976.) This improper cross-examination was emphasized by remarks of the prosecuting attorneys that carried the suggestion that Johnson, being engaged in illegal business, could not operate without corrupting public officials. (III. R. 914, 976.) The curt overruling of defendants' objections added to the injury. (III. R. 914, 967.) During the cross-examination of defendant Johnson and co-defendant Wait, by questions directed and remarks made, the prosecutor charged that William Skidmore was the political fixer for Johnson and other gamblers. (III. R. 913-914, 966, 968.) Johnson was also cross-examined at length about ownership of an interest in a company which furnished gambling paraphernalia to some co-defendants. (III. R. 980-981.) Wait was cross-examined with respect to Johnson's connection with dog tracks in 1927 and was asked in detail concerning arrangements made between the Lawndale Kennel Club owned by Johnson and Wait and the Hawthorne dog track. (III. R. 903-904.) During the cross-examination of Johnson he was asked about his connection with gambling houses prior to 1930. (III. R. 987.) He denied that he owned gambling houses in 1929 and there was then propounded to him a series of questions purportedly based upon a statement which Johnson

had made to some Government agents in 1932 relative to his activities in 1929. (III. R. 937-988.) This cross-examination was outside the scope of his direct examination, was on immaterial matter and was highly prejudicial. It tended to degrade defendant Johnson and involve him in other crimes not related to those charged. How it tended to prove that Johnson wilfully attempted to evade the payment of income tax for 1936 and thereafter or that he conspired to defraud the United States of income tax for those years is difficult to conceive. That the questions were asked and the remarks were made to inflame the jury is too obvious to require argument. They could have served no purpose but to create an atmosphere of hostility and to divert the attention of the jury to immaterial matters.

The Court, by cross-examination of witness Pfingsten and witness Hare, indicated that he did not believe their testimony. He implied that Pfingsten, who has been engaged in property management in Chicago for many years, was concealing from his principals that he was dealing with gamblers when he leased space to Creighton at 63rd and Cottage Grove Avenue. (III. R. 853). How this had any bearing on the issues being tried does not appear. The Court implied by his questions that Hare was withholding information respecting preliminary steps in connection with the purchase of the Bon-Air Country Club. (III. R. 915.) There was nothing in the direct examination which warranted this attitude of the Court. In no instance did the Court cross-examine a Government witness except to aid the Government in developing evidence against the defendants. (II. R. 30, 32, 120, 151, 155, 158, 169, 488, III. R. 573.) That was also the effect of his cross-examination of Sommers on the percentage against a player on a roulette wheel. (III. R. 845-847.) Even the perjurer Goldstein who testified that he held a license to practice law did not excite the Court's displeasure by his

evasive answers on cross-examination. Further proof of his perfidy was barred by the Court's declining to postpone his cross-examination until defendant's counsel could make the necessary investigation for further testing the truth of his statements. II. R. 62, 67, 68.

In these respects the Court threw the weight of his position against the defendants, contrary to the rule often announced that the Court must not only be impartial but must appear so. (*Adler v. United States*, 182 Fed. 464, 472; *Williams v. United States*, 93 Fed. (2nd) 685, 687; *Hunter v. United States*, 62 Fed. (2nd) 217, 220; *Frantz v. United States*, 62 Fed. (2nd) 737, 739.) The Court seemed to have some notion that the rule governing cross-examination of defendants was different from that governing the cross-examination of other witnesses (III. R. 876), notwithstanding the well established rule to the contrary. The Court is under the same obligation to keep the cross-examination of a defendant within proper bounds as in the case of any other witness. *Smith v. United States*, 10 Fed. (2nd) 787, 788; *Taylor v. United States*, 19 Fed. (2nd) 813, 817; *Gideon v. United States*, 52 Fed. (2nd) 427, 430; *Coulston v. United States*, 51 Fed. (2nd) 178, 181; *Tucker v. United States*, 5 Fed. (2nd) 818, 822; *Harold v. Territory*, 169 Fed 47, 53.

Closely akin to improper cross-examination is the stump speech of prosecutor Campbell at the close of the examination of Johnson by the prosecutors and agents March 27, 1939, the report of which appears at the end of Government's Exhibit O-207, read to the trial jury: (II. R. 418)

"Now, our information again is that you are an interested party in a number of gambling houses around here, and I'm inclined to think that our information will be found to be accurate, so that being the case, your story here this afternoon is not in accordance with our information. Now, I want you to

think that over seriously between now and the next time you come down. You'll have a return engagement here, and at that time I think I shall confront you with places. And there's also a penalty for perjury here on these questions and answers. I'm going to caution you about that. The next time you come down here, if you want to stand on your statement given today, it's all right. I'm not threatening you. I want to square up the situation one way or the other, that you do or do not own these places. And that isn't newspaper stuff, either."

Obviously improper matter brought to the attention of the jury by remarks of the prosecuting attorney, or by the questions of the cross-examiner, is no less prejudicial than evidence erroneously admitted over objection. (*Towbin v. United States*, 93 Fed. (2nd) 861, 868; *Skuy v. United States*, 261 Fed. 316, 319; *Berger v. United States*, 295 U. S. 78, 84; *Bombarger v. United States*, 219 Fed. 841, 843.) When the prosecutor cross-examines to degrade the defendant and prejudice him with the jury, he cannot be heard to say that the cross-examination did not do what he intended it should do. (*Salerno v. United States*, 61 Fed. (2nd) 419, 424; *Coulston v. United States*, 51 Fed. (2nd) 178, 182; *Miller v. Territory*, 149 Fed. 330, 339.) The prosecuting attorney could have had no other object in cross-examining defendant Johnson and his co-defendants on immaterial matters than to prejudice them with the jury. That he accomplished his purpose is too plain for argument. A recent case, *United States v. Nettl*, 121 Fed. (2nd) 927, holds that a conviction must be reversed where there is cross-examination of the character disclosed by this record.

G. This defendant was prejudiced by improper rebuttal offered to impeach on immaterial matters injected into the case on cross-examination of defendants.

It is well settled that it is not proper to impeach a witness by proof of prior contradictory statements on a subject collateral to the issue. (*Newman v. United States*, 289 Fed. 712, 716; *Despiau v. United States Casualty Co.*, 89 Fed. (2nd) 43, 46; *Bullard v. United States*, 245 Fed. 837, 840; *Harrold v. Territory*, 169 Fed. 47, 51; *People v. Pfanschmidt*, 262 Ill. 411, 462.) Accordingly the Government was bound by the answers of defendant Wait with respect to the time and place of the faro game with Laemmle, (*Rau v. United States*, 260 Fed. 131, 136; *Smith v. United States*, 10 Fed. (2nd) 787, 788; *Coulston v. United States*, 51 Fed. (2nd) 178, 180, 182,) and this defendant was prejudiced by the testimony of Ross in rebuttal of Wait's answers. (III. R. 998-1001.) Likewise the Government was bound by Johnson's answers with respect to whether he operated gambling houses in 1929 and prior thereto, (*Smith v. United States*, 10 Fed. (2nd) 787, 788; *Weil v. United States*, 2 Fed. (2nd) 145; *Rau v. United States*, 260 Fed. 131, 136; *Bullard v. United States*, 245 Fed. 837, 840,) and the admission of Johnson's statement to the Government agents in 1932 to the contrary was prejudicial. (III. R. 996-998.) This rebuttal testimony brought in immaterial matter and distracted the attention of the jury from the issues of the case. Occurring at the end of the trial, as it did, it left the jury with a fresh impression that defendant Johnson had testified falsely with respect to his activities prior to 1929 and it impaired, if it did not destroy, the effect of his testimony on matters that were material to the issues. That the admission of this rebuttal testimony was reversible error seems to us an unavoidable conclusion.

In cross-examining Johnson, the prosecuting attorney held in his hands a transcript of the alleged statement of Johnson, and later held the transcript in his hands in putting the rebuttal questions to witness Huebsch. (III. R. 989, 996.) Defendant's attorney requested permission to examine this statement for the purpose of re-direct examination of defendant Johnson and for the purpose of cross-examination of witness Huebsch and this was refused. (III. R. 989-990, 996.) This action of the Court was error. *Wright v. Bragg*, 96 Fed. 729, 733; *State v. Worley*, 82 W. Va. 350, 96 S. E. 56, 57; *State v. Murphy*, 154 La. 190, 97 So. 397, 402; *Butcher v. Seattle*, 142 Wash. 588, 253 Pac. 1082; *Polk v. M.K.T.R. Co.*, 341 Mo. 1213, 111 S. W. (2nd) 138, 146.

H. The motion for mistrial should have been granted. There was no other way open to assure the defendants a fair trial after the misconduct of the prosecutors and the erroneous rulings of the Court created an atmosphere of general criminality.

The Court erred in denying the motion to withdraw a juror and to declare a mistrial for prejudicial conduct of the prosecuting attorneys and of the Court on cross-examination of defendants and their witnesses. III. R. 1003.

This prejudicial conduct in bringing to the attention of the jury toward the end of the trial the implications that Johnson was a gangster, that he was buying police protection, that he was secreting witnesses, and that he was generally untrustworthy was so prejudicial that a fair trial could not be had. Johnson was charged in this case with the crime of unlawfully attempting to evade the payment of income tax and with conspiring with others to defraud the United States of income tax due from him and with nothing else. The issues were narrow. To inject into the case matters entirely foreign to these charges

distracted the attention of the jury from the questions they were called upon to decide and left a prejudice with the jury that could not have been corrected by instructions by the Court, if any had been given on the subject. There was no course that would have safeguarded the rights of the defendant other than the declaration of a mistrial. *Holt v. United States*, 94 Fed. (2nd) 90, 94.

1. Exhibits not identified with defendant Johnson and containing immaterial matter should not have been sent with the jury on retirement. The sending of the truckload of exhibits to the jury room was an invasion of the privacy of the jury and a denial of defendant's constitutional right to be confronted with the witnesses against him.

Sending to the jury a mass of documents lays undue emphasis on a part of the evidence, and the Court should permit the jury to have only such exhibits as he finds necessary to a proper consideration of the case. (*Buckley v. United States*, 33 Fed. (2nd) 713, 717; *People v. Clark*, 301 Ill. 428, 432.) It is error to permit exhibits to go to the jury which contain prejudicial matter, even though parts of the exhibits are material and properly in evidence. (*United States v. Dressler*, 112 Fed. (2nd) 972, 978.) The presumption is that the presence in the jury room of improper exhibits is injurious to the defendant. *Ogden v. United States*, 112 Fed. 523, 527.

It is impossible to tell what damaging effect upon the minds of the jury resulted from the truckload of exhibits that was hauled into the jury room. Every document which was received in evidence was delivered to the jury over the objection of defendants. (Ill. R. 1023-1024.) This included the fifty-two individual income tax returns of the several defendants, the statements of Johnson, Sommers, Kelly and Hartigan, the grand jury testimony of Brown, the voluminous records of the Nationwide News Service,

the mass of records of the Illinois Bell Telephone Company, and miscellaneous ledger sheets, deposit slips, Recordak films, delivery tickets and what not. (Assignment 39, III. R. 1055-1057.) Out of the presence of the defendants and without the supervision of the Court, the jury were permitted to select such of these exhibits as they chose and draw such conclusions from them as they pleased. The jury had much of the Government's evidence before them in writing but were left to recollect the defendants' explanations of these various exhibits and their testimony with respect to them. It was reversible error to thus invade the jury room.

These grave errors compel a reversal of the judgment of the District Court.

CONCLUSION.

We confidently believe that the indictment is void, not only because the grand jury that returned the indictment had no legal existence but also because of the insufficiency of the indictment itself. We also sincerely present our claim that there is no competent evidence in the record which will support the conviction under any count of this indictment. If any of these positions is sustained, then the judgment of the Circuit Court of Appeals will be affirmed and the defendant discharged.

If this Court should conclude that there is a valid indictment and that there is some substantial evidence in the record on which the jury might reasonably have based its verdict as to some count, then we earnestly submit that the many errors committed in the admission of incompetent and immaterial evidence and in the improper cross-examination of the defendants and their witnesses denied to this defendant that fair and impartial trial which is the boast of the American system of criminal justice.

In the atmosphere created at the trial it was impossible for the jury to fairly weigh the evidence and reach a true verdict. The harsh judgment entered against this defendant cannot be sustained in the light of the well established rules governing the trial of criminal cases.

We pray that the judgment of the Circuit Court of Appeals be affirmed. If this Honorable Court does not affirm, then we humbly pray that a new trial be granted so that this defendant's case may be presented to another jury and his guilt or innocence determined according to the law of the land.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1942

No. 4

UNITED STATES OF AMERICA

vs.

WILLIAM R. JOHNSON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

**BRIEF FOR WILLIAM R. JOHNSON
ON RE-ARGUMENT.**

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1942

UNITED STATES OF AMERICA

vs.

WILLIAM R. JOHNSON

No. 4

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

**BRIEF FOR WILLIAM R. JOHNSON
ON RE-ARGUMENT.**

This defendant, William R. Johnson, made a full and accurate statement of the facts with appropriate record references in his brief filed on the first submission, (pp. 5-34.) and this Honorable Court is respectfully referred to that statement for a narrative summary of the evidence. No such statement appears in the brief for the Government filed at the last term nor in the brief now filed on re-argument. A reading of this defendant's statement of the case will enable this Court to follow more readily the arguments of counsel in response to the four questions propounded by this Court in its order of May 4, 1942.

By its questions this Honorable Court indicates that it is considering the contention of this defendant that the verdict is not supported by the evidence in the only way it can be considered if it is to be determined on the record made. The evidence must be considered as to each count separately. This defendant cannot be guilty of an attempt to evade income tax for any year unless some tax was due for that year. (*Gleckman v. United States*, 80 Fed. (2nd) 394, 399; *O'Brien v. United States*, 51 Fed. (2nd) 193, 196.) Proof that he attempted to evade his tax in some unidentified year prior to 1940 is not sufficient to sustain a conviction for an alleged attempted evasion in 1936 or 1937 or 1938 or 1939. In order to answer the contention of the defendant that there is no proof to sustain the charges made by any of the four substantive counts and to answer the questions of this Court specifically directed to this issue, the evidence relative to each of the years covered by these counts of the indictment must be set apart and analyzed. The burden is on the Government to point to the evidence which shows that this defendant did not pay all the taxes due from him for the year 1936 and for the other years separately. This it cannot do by the shotgun method employed in both of its briefs. It must use a rifle if it wants to hit the bull's eye in answering this Court's questions so appropriately put in ordering re-argument of this case.

The brief for the Government opens with a criticism of this Honorable Court because it seeks by its questions to get an answer to the count by count contention of defendant Johnson that the evidence does not sustain the charges. It is argued that "the jury was entitled to take into account the entire mass of testimony pointing towards Johnson's ownership of the gambling houses" (pp. 5-6) in determining whether Johnson had received unreported income, however small a part of this hetero-

geneous "mass of testimony" was legal evidence and how ever far the "mass" missed the mark toward which it was pointed. Referring to this Court's questions, it is bluntly stated that "it is erroneous" to attempt to search the record for support of the "ownership" theory separate from the "expenditure" theory, and that the "correct approach" is to consider all of the testimony and exhibits *en masse*. (P. 5.) "The issue," so it is argued, "is not whether the verdicts can be sustained on any one of these elements, [the constituent elements of the questions,] considered separately, nor is it necessary to establish each of those elements; rather, the issue is simply whether the jury was entitled to conclude from the entire record that Johnson had received unreported income." (P. 6.) Attorneys for the Government persist in their refusal to defend the verdict count by count; perhaps because it cannot be done on this record.

Defendant Johnson welcomes this Court's questions. They are directly to the points involved on the issue of whether there is legal evidence to sustain the verdict against him on any of the five counts. He will answer these questions count by count directly and unequivocally.

First Question.

What evidence warranted submission by the trial court to the jury of the charges made as to each of the defendants (a) in each of the substantive counts, and (b) in the conspiracy count?

By two distinct methods the prosecution sought to sustain the allegations that defendant Johnson failed to report all of his taxable income for the years 1936 through 1939:

(a) By undertaking to prove that he owned a chain of gambling houses operated in and about Chicago and that all the proceeds of checks cashed and currency exchanged by persons operating these gambling houses were income from these gambling houses, and therefore that the aggregate of these financial transactions was the amount of the taxable income of this defendant and that this was in excess of the amount he reported; and

(b) By offering proof that he expended in certain years more cash than he had available for spending according to income reported and admitted assets.

The evidence offered to support the one theory in no manner supports the other. The Government accountant used only the evidence received under the gambling house ownership theory in arriving at the *amount* of this defendant's alleged income in the indictment years. (III. R. 742-745.) He admitted that there was no proof of unreported income in 1936 under the expenditure theory, (III. R. 759,) and that this defendant's reported income and admitted cash resources exceeded his expenditures in 1937, less living expenses from 1932 to 1937, by over \$35,000. (III. R. 759-760.) We shall show that the "ownership" theory not only furnishes no support for the "expenditure" theory but that it destroys it. Admittedly, if defendant Johnson had the income which it is claimed he had from the gambling houses in any indictment year involved, then he had ample funds in any subsequent year to meet all claimed expenditures. While the attorneys for the Government give lip service to their contention that the one theory complements the other, when they come to make their computations of annual income under the gambling house ownership theory they ignore the expenditure theory, (pp. 52-53,) and when they make their computation of excess of expenditures over reported income and admitted cash resources they ignore the gambling house

ownership theory. (Appendix, Gov. brief.) It is absurd to argue, as they do, (p. 5,) that "The fact that Johnson's expenditures exceeded his known cash resources plus reported income furnishes strong support for the conclusion that he owned the gambling houses." This is strange logic.

Since we must argue the sufficiency of the evidence under the expenditure theory under Question 4, we shall here confine our argument to the sufficiency of the evidence under the gambling house ownership theory. We are confident that an examination of the record will show clearly that there is no evidence under the gambling house ownership theory that "warranted submission by the trial court to the jury of the charges made as to each of the defendants (a) in each of the four substantive counts, and (b) in the conspiracy count."

Preliminary to treating the evidence as it relates to the several counts, we shall answer some of the arguments made by the attorneys for the Government which they contend relate to all of the counts. An analysis of all the evidence will show:

1. There is no evidence that defendant Johnson was the sole owner of a group of gambling houses or of any gambling house.

2. There is no evidence showing what per cent of interest, if any, defendant Johnson had in any gambling house.

3. There is no evidence of the amount of income derived from any gambling house.

4. There is no evidence of the amount of profits made by any gambling house.

5. There is no evidence that defendant Johnson had any knowledge of the banking or currency exchange transactions of any gambling house operator.

6. There is no evidence of the amount of money involved in any year in the banking or currency exchange transactions of any gambling house operator.

7. There is no evidence that defendant Johnson received any of the proceeds of such banking or currency exchange transactions.

It is argued for the Government that the twenty-five gambling houses named in the indictment were operated as a unit, (pp. 9-30,) and in support of this contention it is pointed out that one crew of workmen constructed or repaired some of these houses, (pp. 12-15,) that most of these houses received their horse race information from one service bureau, (pp. 15-18,) that the operators of some of these gambling houses visited each other occasionally and sometimes helped each other, (pp. 18-22,) that a few persons usually employed in gambling houses worked at different times in several of these houses, (pp. 22-24,) that on two or three occasions in eight years one operator borrowed equipment from another and that some of the operators used the same transfer man in moving equipment, (pp. 24-25,) that some of the operators used the same bus company in providing bus service to patrons to places in the country when city houses were closed, (p. 26,) and that three of the operators cashed checks and exchanged currency at the same currency exchanges. Pp. 27-30.

If all or some of these gambling houses were operated by the co-defendants as a unit, it would prove nothing against defendant Johnson without proof of his ownership of these houses and that he received income from them in one of the four indictment years greater than he reported for that year, but we shall not rest on the weakness of the case against defendant Johnson. We shall undertake to demonstrate that the contentions made for the Government are based upon a mass of disconnected

details of gambling house operations and trifling incidents and casual conversations spread over a period of eight years or more which do not even tend to prove that the twenty-five houses named in the indictment, or any of them, were a chain owned by one person, much less by defendant Johnson. Here again the attorneys for the Government mass the bits of testimony relating to twenty-five or more gambling houses in and about Chicago and create an atmosphere of substantial evidence as to some particular house operated by some co-defendant. The Court will note that they repeatedly refer to the testimony of two witnesses for support of their theory,—Nathan Cobb, (II. R. 348-373.) and R. J. Schumacker. (II. R. 174-192.) When the evidence as to each gambling house is analyzed and weighed it will appear that there is no support for the contention that the twenty-five named gambling houses were operated as a unit. Let us examine that evidence.

Horseshoe Club. The Horseshoe Club was located at 4721 North Kedzie Avenue in the city. Thomas Barnes had operated a gambling house at different locations in this neighborhood for several years and some time prior to his death in 1934 had established his club at this location. Late in 1934 co-defendant Jack Sommers acquired this property from Mrs. Barnes. (III. R. 809.) Thereafter he paid the rent. (Def. Ex. S-1 and S-2; III. R. 782-783.) hired and supervised all the employees, (III. R. 785-787.) and generally directed all operations. (III. R. 811.) Occasionally co-defendant James Hartigan, who was his close friend, would help Sommers as an accommodation when Hartigan's place was closed. (III. R. 817.) The fact that one of the forty-six gambling house employees who testified stated the conclusion that Sommers was a cashier at the Horseshoe in 1935 and that another stated the conclusion that Sommers was the night boss in

1937 and another that he was the day boss in 1939, (Gov. brief, p. 19,) is thin proof that Sommers was not the owner from 1935 to 1939. As owner he was the boss day and night, and worked in any capacity he chose. The statements of two witnesses that Hartigan became boss of the Horseshoe after the death of Barnes in 1934 and the statements of others that they saw him around the Horseshoe and thought he was one of the bosses, (Gov. brief, pp. 20-21,) are mere conclusions without foundation and certainly do not establish that Sommers was not the owner, or that this gambling house was part of a chain. No more weight can be given the testimony of three witnesses that Kelly was working as box-man at the Horseshoe in 1935 or 1936. (Gov. brief, p. 22.) These occasional services to Sommers by Hartigan and Kelly, if they took place, prove nothing material to this case. Add to this the fact that Sommers less than half a dozen times in five years "sent" or "recommended" some person for employment at another house, (Gov. brief, p. 23,) and that Sommers on two or three occasions arranged for transfer or bus service for some other operator, for which the user paid, (Gov. brief, pp. 25-27,) and the answer is still zero.

What the Court said in *Sorenson v. United States*, 168 Fed. 785, is particularly applicable to these few instances of the relations between Sommers and Hartigan and Kelly which throw no light on the question of whether Johnson failed to return all his income in 1936 and the other indictment years: (pp. 799-800)

"A proper analysis of the pronouncements of courts favoring the admissibility of isolated instances of an inculpatory character, and the advisability of not excluding each disjunct part merely because of its insufficiency to justify a conviction, will disclose that the parts held to be admissible come within the range

of legal competency, according to established rules of evidence as applied to the special facts and circumstances of the particular case. But they do not imply that mere suspicion is the equivalent of proof, or that mere hearsay testimony may be resorted to, or that unrelated, incompetent incidents and circumstances may become admissible because of the number of them. In law as in mathematics the multiplication of 0 by 2 does not make 1. In other words, a piece of evidence, which in and of itself is incompetent under settled rules of law, cannot be rendered admissible by attempting to link it up with some other fact or circumstance that might be competent. Otherwise, it is made possible to augment 1 by the mathematical absurdity of attempting to add to it 0."

Dev-Lin Club. The Dev-Lin Club is located at Devon and Lincoln Avenues outside the city limits. It was opened by Edward Wait in 1935. (III. R. 784, 895.) Sommers bought it at the end of the season (III. R. 812, 896) and thereafter paid the rent, (Def. Ex. S-4 (a-i); III. R. 784,) hired and supervised the employees, (III. R. 785-787,) and generally directed the house as his country location when his city house was closed. (II. R. 323; III. R. 786, 812.) As proof of the fact that Sommers was not the owner but that the Dev-Lin Club was part of a chain of gambling houses operated as a unit, the attorneys for the Government point to the testimony of five witnesses who related isolated incidents of Hartigan's visits to this house, (p. 21,) to the testimony of one witness who saw Flanagan once at the Dev-Lin Club and thought he was a boss, (p. 21,) to the testimony of another witness who stated that an unidentified Kelly was in charge of the roulette wheels, (p. 22,) and to a few other trifling incidents.

Sommers made a statement to some agents in December 1939 that he was the sole proprietor of the Horseshoe and

the Dev-Lin and that no one had been associated with him in their operation since he acquired them. (II. R. 467.) This statement of Sommers, (Gov. Ex. O-210; II. R. 467-471,) received in evidence on the offer of the prosecution over the objection of the defendants, is binding on the Government. (*Young v. United States*, 97 Fed. (2nd) 200, 202; *State v. Darrah*, 60 Idaho, 479; *State v. Hernandez*, 36 N. Mex. 35; *Spicer v. State*, 113 Tex. Crim. App. 616.) It stands as proof by the prosecution that the Horseshoe and the Dev-Lin were not units in a chain of gambling houses owned by someone other than Sommers. Defendant Johnson is entitled to the benefit of this evidence.

D. & D. Club. The D. & D. Club is located in a large store and office building at the intersection of Dearborn Street and Division Street known as the Lincoln Park Building, (II. R. 22,) and was operated by co-defendant William Kelly. (II. R. 257, 322, 386, 392.) Kelly rented his space through the Tavalin agency at \$450 a month in 1936 and when he operated he paid his rent. (II. R. 14, 23.) Defendant Johnson has owned this building since 1933 and has returned his income therefrom in detail. (Gov. Ex. R 7-R 13.) When Kelly was closed he would get behind in his rent and Johnson forgave all or part of Kelly's arrearages just as he did those of other tenants. (II. R. 17-18, 27-28.) Kelly made the alterations and installations of gambling paraphernalia at his own expense. (III. R. 878, 885.) No witness testified that any other person was in charge of the operation of the D. & D. Club. The only testimony that our opponents can point to as supporting their argument that this house was a unit in a chain relates to two or three instances of a gambling-house worker going from another house to the D. & D. Club or going to another house from this club, (pp. 23-24,) a couple of instances of equipment being moved

to and from this house, (p. 25,) the hauling of patrons from this club to Harlem Stables on occasions when the D. & D. Club was closed, (p. 27,) and the use of currency exchange facilities by Kelly also used by Sommers and Hartigan. (Pp. 27-29.) When these incidents are spread out over three years they become mighty thin. Kelly's statement that he owned the D. & D. Club and that defendant Johnson had no interest in his house (Gov. Ex. 208; II. R. 458-460,) was offered in evidence by the prosecution: and is binding on the Government and cannot now be disclaimed.

Harlem Stables Club. Harlem Stables Club was located at 4301 North Harlem Avenue. Co-defendant James Hartigan leased these premises in August 1936 and paid the rent thereafter to Walter Sass, a neighboring truck farmer who was the agent for the owners. (III. R. 804.) Thereafter, he operated this house. (II. R. 331, 384.) The testimony relied upon to show that this house was part of a chain showed that the workmen who made alterations and additions for Hartigan also did work on other houses, (Gov. brief, p. 13,) that co-defendant Sommers was about the premises during construction and that sometimes he did acts connected with the operation of the house which indicated to some observers that he was one of the bosses, (p. 19,) that Kelly on a few isolated occasions in 1937, 1938 and 1939 appeared to have something to do with the management, (p. 22,) that three or four employees came from other houses to Harlem Stables, (pp. 23-24,) that some gambling paraphernalia was moved from this house to the House of Niles and to Lincoln Tavern and from the Horseshoe and Lincoln Tavern to this house, (pp. 24-25,) that patrons were brought to Harlem Stables from city locations when the city houses were closed, (pp. 26-27,) and that Hartigan used the facilities of the same currency exchanges that were used by Sommers and Kelly. (Pp.

27-29.) Hartigan stated to Government agents that he was the sole proprietor of Harlem Stables, (Gov. Ex. O-209; II. R. 462,) and defendant Johnson is entitled to the benefit of this statement which was put in evidence by the prosecution.

Lincoln Tavern. Lincoln Tavern was a roadhouse located on Dempster Road in the country west of Evanston. The restaurant and bar were operated by Edward Wait in 1936, and Hartigan operated a gambling room in these premises before he opened Harlem Stables. (II. R. 346, 384; III. R. 896, 906.) On two occasions,—a week in the winter of 1936 and two weeks in the summer of 1937,—when the Horseshoe and the Dev-Lin were closed, Sommers moved his crew and equipment to Lincoln Tavern. (III. R. 787, 812, 848.) The only evidence to which the attorneys for the Government point to show that Lincoln Tavern was part of a chain of gambling houses is that the construction crew that made the alterations was the same as the crew that did work at some of the other locations, (Gov. brief, p. 12,) that one witness saw Flanagan at the door of Lincoln Tavern one evening greeting patrons as they entered, (pp. 21-22,) that Kelly worked as box-man there on one or two evenings in 1936, (p. 22,) that some equipment was moved between Lincoln Tavern and two other houses, (pp. 24-25,) that some patrons were hauled from the city to this country gambling house, (p. 26,) and that Lincoln Tavern used the same currency exchange facilities as some of the other houses. (Pp. 27-29.) The fact that Sommers operated in Lincoln Tavern for short periods when Hartigan was not using his space accounts for the moving of equipment between the Horseshoe and the Dev-Lin and Lincoln Tavern, (Gov. brief, p. 14,) and the presence of Sommers (p. 19) and some of his employees. (P. 23.) The fact that Hartigan operated Harlem Stables after he left Lincoln Tavern ac-

counts for his presence at different times at both places, (Gov. brief, p. 20,) and for his shifting of equipment from one house to the other. Pp. 24-25.

4020 Club. The gambling house at 4020 West Ogden Avenue and the nearby house at 2141 South Pulaski (formerly Crawford) were operated by co-defendant Flanagan. (II. R. 256; III. R. 892, 931.) The evidence on which the attorneys for the Government rely to put these houses in a chain is that Flanagan was once seen greeting acquaintances at Lincoln Tavern, (II. R. 296,) that Flanagan sent one of his employees to the Horseshoe back in 1933 when the Horseshoe was operated by Barnes, (II. R. 295,) and that patrons were once hauled from 4020 West Ogden to Harlem Stables. (II. R. 390.) Flanagan cashed his checks and exchanged his dealing money at a currency exchange never patronized by any of the other gamblers. (II. R. 552, 938-939.) It is difficult to conceive of a gambling house being less identified with other gambling houses in a city than was Flanagan's house with the other houses named in the indictment.

Other houses. Of the other gambling houses mentioned in the indictment, Reginald Mackay operated the Casino Club in the city and the House of Niles in the country, (II. R. 330, 339, 375, 382,) Andrew Creighton operated the Southland Club at 6245 South Cottage Grove Avenue in the city and the Club Western, the Vincennes Club, the Lake Park Club, the Select Club, the Club Proviso, and the 406 Club in outlying sections in and around Chicago, (III. R. 850-858,) and Edward Wait operated the Villa Moderne gambling room on a percentage basis for the proprietors of this roadhouse. (III. R. 896.) The gambling room at the Bon-Air Country Club was operated about a month in 1939 by Bon-Air Catering Company of which Wait was president. (III. R. 902, 910.) Mackay, Creighton and Wait were acquitted. The other seven

clubs named in the indictment were not identified with any defendant. -

Much is made of the fact that these gambling houses got their race information service from one service bureau. (Gov. brief, pp. 15-18.) It is said that these "houses were interconnected by a private telephone exchange," (p. 9,) and that these "gambling houses were physically interconnected by a private telephone system." (P. 15.) Neither of these statements is true. The evidence is that each house subscribed for the service, was furnished with a one-way line from the service bureau over which news was broadcast in the room where race bets were placed and with a two-way line over which the subscribers could communicate by phone with the bureau. (II. R. 214; III. R. 932.) There is no evidence that one gambling house operator could talk to another through a switchboard at this service bureau. Each house had its own regular switchboard connection with the telephone company. (Gov. Ex. T-4 to 36.) There is no evidence that any of the gambling house operators knew anything about the arrangements of any other respecting the separate service bureau contracts. The evidence shows that houses, in no way identified with present defendants, were served from this bureau. (Houses in Cicero and others in Chicago at 3332 N. Milwaukee, 6825 N. Milwaukee, 3209 W. Ogden, 2133 S. Kedzie, 3946 W. School, 7515 N. Clark, 4911 N. Monticello and 4837 N. Elston; and all of the houses operated by Creighton, Wait and Mackay, who were acquitted; II. R. 195-215.) Flanagan's subscribers varied in number and were not steady. (III. R. 934.) A part of the service furnished was the taking of lay-off bets and of daily-doubles and this accounts for the checking of bets and the delivery to the service bureau of duplicate sheets mentioned at page 16 of the brief for the Government. (III. R. 933-934.) There is proof that bookmakers' supplies

were delivered to one Morgan at the store and office building where the service bureau occupied a second-story office, (III. R. 729,) but there is no evidence that these supplies were delivered to the bureau and supplied by it to any house conducted by any of present defendants. Sommers bought his supplies directly from Entry Service Company, Edward Don & Company and O'Neil & Company. (Def. Ex. S-12 to S-16; III. R. 811.) Other co-defendants bought from O'Neil. (III. R. 732-734.) There is no more basis for concluding that the owner of the service bureau owned the gambling houses served by it than there is for concluding that the businesses of telephone subscribers are owned by the telephone company or that the newspapers served by the Associated Press are owned by it.

This is the sort of evidence on which the prosecution relies to show that the houses of co-defendants Sommers, Hartigan, Kelly and others were mere units in a chain of gambling houses operated by some individual other than themselves and that they were merely employed managers with no other interest in their respective houses. The evidence does show that these men were friends, that they were all engaged in operating gambling houses, and that they accommodated each other when occasion presented itself. The fact that farmers in a neighborhood lend each other equipment and swap work occasionally would not be considered proof that all of their farms were owned by some individual or a syndicate. Nor would much significance be attributed to the fact that all of the farmers in a community did business with one bank or employed one accountant to make out their income tax returns or bought their supplies from a cooperative service company or hired the same trucker in marketing livestock. Occasional conversations and trifling incidents, which would not be considered as proof of anything if they

had occurred among people in other fields of endeavor, are grossly exaggerated in importance and given unnatural and even fantastic meaning just because the men involved are gamblers.

After satisfying themselves that "the evidence which has just been summarized was unquestionably ample to justify the jury's concluding that the important gambling houses named were not separately owned establishments but were operated and controlled under a single ownership," the attorneys for the Government then announce with amazing confidence that "The fact of single ownership having been established, the Government's evidence likewise identified Johnson with the houses in a number of ways and a multitude of instances which formed a most substantial basis for the jury's apparent conclusion that Johnson was the single owner." (Brief, p. 30.) We doubt whether this Court has ever seen a thinner case of ownership made than is made in this case. The proof would not be sufficient to establish title to an old straw hat in September much less title to properties which the Government contends are capable of yielding a million dollars a year income.

A point is made of the fact that Johnson owned the building at 4020 West Ogden Avenue, the building at 2141 South Pulaski Road (formerly Crawford Avenue), and the Lincoln Park Building at Division and Dearborn, the first two of which were rented to John Flanagan and space in the third to William Kelly. (Gov. brief, 30.) We submit that this does not even tend to prove that Johnson was the owner of the gambling houses located in these buildings. Johnson acquired an interest in the Lincoln Park Building in 1925 and became sole owner in 1933. (II. R. 11.) He bought 2141 South Crawford in 1929 and 4020 W. Ogden in 1931. (III. R. 972.) Flanagan paid his rent regularly and Johnson reported it as income. (Gov.

Ex. R 6-R 13.) Kelly made his arrangements for space in the Lincoln Park Building with the renting agent in 1936 and Johnson included as a part of his returns the report of this agency including the rent paid by Kelly. (Gov. Ex. R 11-R 13.) When Kelly was unable to pay his rent, Johnson approved the forgiveness of all or a portion of the rent due just as he did with other tenants. (II. R. 23, 27-28.) If these acts of Johnson as a landlord prove anything material to this case, they tend to prove that Johnson was not the owner of the gambling establishments located in his buildings. If Johnson was the owner of the D. & D. Club and desired to conceal his ownership by pretending to charge himself rent, then he would have paid all of the rent through Kelly to his rental agent and would not have gone through the useless procedure of charging himself rent and then forgiving it. The fact that Johnson installed air-conditioning in the quarters occupied by the D. & D. Club without increasing the rent (Gov. brief, p. 31) proves nothing. Many landlords make such improvements in their buildings to hold tenants who are in the buildings under leases favorable to the landlord. In this connection we point to the testimony of witness Carroll who testified that he solicited defendant Johnson to insulate his building at 4020 Ogden Avenue and that Johnson refused to make the improvement but said that Flanagan could do it if he chose. Later Flanagan gave the order and paid the cost. III. R. 892.

The mere fact that the construction crew, working under the direction of Roy Love, that did work for some of the co-defendants and other operators of gambling houses also did some work on Johnson's farm and at the Bon-Air Country Club, (Gov. brief, p. 31,) we submit is no proof that Johnson owned the gambling houses. The workmen who testified said that they were employed by Love who was their boss. (II. R. 128, 134, 235, 336.) There is no

testimony that Johnson had anything to do with the employment of the crew or the direction of the work. It is hardly conceivable that, if Johnson owned these gambling houses, as much work could have been done as the record shows was done, without Johnson being identified with it in some way.

The attorneys for the Government attach "particular significance" to the testimony of Lenz respecting some alleged conversations relating to Flanagan's contract for race information which he was purchasing from Nationwide News Service. (P. 32.) The witness testified that one of these conversations took place about 1935 at some place on Ogden Avenue. The witness was indefinite as to the date and the place and the conversation. His recollection was that there was some controversy with Flanagan about the rate being charged and that defendant Johnson was present and supported Flanagan in his protest. He said the account being discussed was Flanagan's account. (II. R. 151-152.) On cross-examination he said defendant Johnson had no account with Nationwide. (II. R. 161.) If this conversation occurred as related, it proves at most that Johnson was merely helping his friend and tenant Flanagan get a more favorable rate for information service. The witness was even more indefinite about his alleged conversation with Flanagan concerning rates in 1938 at the office of Nationwide. He first said that there was a conversation between himself and Flanagan and Mr. James M. Ragen, the manager. (II. R. 153.) By a leading question he was asked whether there was a conversation when defendant Johnson was present and he said that he believed there was another conversation but that he could not recall whether Johnson was present but he hardly thought he was. (II. R. 154.) When, notwithstanding this answer, the Court asked, "What did Mr. Johnson say about it if he said anything?" the witness

answered, "He said it was not worth—this is going back and I had to deal with many, many subscribers—I can't recall." When neither the prosecutor nor the Court could get the witness to commit himself that defendant Johnson was present at any of these conversations at the headquarters of Nationwide News Service, the Government was permitted to read from a statement which Lenz had given to some Government agents before he took the stand and this is the statement which is quoted at page 32 of the brief for the Government. Obviously, the admission of the witness that he made the statement to the agents is not proof that defendant Johnson made the statement credited to him in the statement of the witness but is proof merely that the witness made the statement to the agents. This statement offered by the Government (and, we submit, improperly received,) to impeach its own witness cannot be considered as an admission of Johnson. (*Southern Railway Co. v. Gray*, 241 U. S. 333, 337; *Purdy v. People*, 140 Ill. 46, 52.) Thus this testimony of "particular significance" comes to naught.

Another isolated incident which it is claimed shows defendant Johnson's ownership of the alleged chain of gambling houses is a purported conversation with one Atlas, (Gov. brief, p. 33,) who says that he met defendant Johnson at Lincoln Tavern about December 1935 and that Johnson asked him about installing an accounting system in the restaurant and bar. He says that on the same evening he also met Roy Love and Edward Wait and that he worked with Love on the books and that he made his monthly reports to Wait. (II. R. 305.) Wait testified that he was the owner of the restaurant and the bar at Lincoln Tavern and that he arranged with Atlas for installation of the accounting system. (III. R. 906.) Whatever the facts, surely this incident occurring in 1935 does not prove that defendant Johnson owned either the gam-

bling room in Lincoln Tavern or any part of the other twenty-four gambling houses named in the indictment in 1936.

Another grain of sand which is dropped in the scale against Johnson is an occurrence at the Dev-Lin Club some time in 1936 or 1937 when a dispute arose as to the call on crooked dice and the player left the table and defendant Johnson undertook to pacify him and finally offered to pay out of his own pocket the \$10 or \$15 which the player had lost. (Gov. brief, p. 34.) The player, Pollack, was a regular gambler and knew defendant Johnson, and his description of the incident indicates that Johnson was merely trying to prevent an unpleasant argument in a gambling house and that the witness did not regard Johnson as the proprietor and attached no significance to Johnson's effort to pacify him. (II. R. 379-380.) We submit that this is pretty thin testimony on which to base ownership of the Dev-Lin, much less of the other gambling houses alleged to make up the chain.

Another incident which the attorneys for the Government would like to have this Court consider as proof that Johnson owned the Horseshoe is a conversation outside the presence of Johnson which is alleged to have occurred between a woman gambler and co-defendant Sommers some time in 1938 about the limit on Red and Black. (P. 34.) The witness claimed that she later talked with Johnson about this matter and that he told her he would get in touch with Sommers, but she declined to state who went with her when she went to see Johnson, and she admits that nothing was done about changing the limit on the game. (III. R. 572-573.) This certainly approaches the nadir in evidence.

Much is made of an incident occurring at the time Harlem Stables was opened at which Johnson was present.

(Gov. brief, pp. 34-36.) If the Court will read the cross-examination of Russell Glave (II. R. 288-290) and of Glenn Glave (II. R. 292) and then read the testimony of the disinterested witnesses Walter Sass (III. R. 804-805) and Earl Jackson (III. R. 805-807), it will see that the Glaves took advantage of a situation in 1936 to shake down co-defendant Hartigan who paid a small price through his friends (he was home ill, III. R. 806) to buy his peace rather than risk a public fight with the Glaves, and also that if defendant Johnson had yielded to their demand during the trial to pay them another \$500 (II. R. 288-289, 292) they would not have testified in this case. The receipt of evidence giving details of the controversy between the Glaves and Jackson respecting the ownership of Harlem Stables, which carried the implication that defendant Johnson and co-defendants "muscle" the Glaves out of their place of business and "robbed" them of fixtures and stock claimed to be worth \$3,500 and then bought them off by paying to them and to former employees \$600 to procure the withdrawal of the complaint filed with the State's Attorney, involved proof which indicated complicity in the commission of other crimes and left the suspicion that Johnson may have bribed the State's Attorney through the Glaves' lawyer, who was said to be the State's Attorney's cousin. This proof was altogether immaterial, (*Coulston v. United States*, 51 Fed. (2nd) 178, 180; *Weil v. United States*, 2 Fed. (2nd) 145, 146,) and its receipt was reversible error. Certainly the incident is slight proof that defendant Johnson was the sole owner of Harlem Stables, much less that he owned the other gambling houses in the alleged chain.

Much is made of the fact that defendant Johnson was instrumental in procuring employment in gambling houses for a few of the scores of employees who testified for the prosecution. (Gov. brief, pp. 36-37.) All but four of such

witnesses,—Cieslik (II. R. 222), Greenberg (II. R. 233), Weeks (II. R. 276), Coote (II. R. 315), Lebbin (II. R. 322), Meyer (II. R. 328), Leonard (II. R. 339), Wolfson (II. R. 387), Singer (II. R. 396-397),—admitted that Johnson merely recommended them for employment and that they were employed by and worked for the respective operators of these gambling houses. Only Schumacker (II. R. 177-178), Didier (II. R. 225), Kehoe (II. R. 309), and Cobb (II. R. 351-352) testified that Johnson directed the operator to put them to work. If we accept as true the alleged direction of Johnson to Sommers to hire Schumacker to work at the Horseshoe (Gov. brief, p. 36) and the alleged direction of Johnson to Hartigan to give Kehoe \$10 a week until he could get a job (Gov. brief, p. 37), these directions are nothing more than requests from Johnson to these gambling house operators to take care of a couple of men who were unemployed. Didier admitted on cross-examination that Johnson helped him get jobs because he had a large family and needed work. (II. R. 226-228.) These isolated acts of kindness certainly do not tend to prove that Johnson was the owner of these gambling houses. The testimony of these witnesses indicated, as Johnson admitted, that Johnson was frequently solicited to aid unemployed men to get work and that he had in many instances been able to help men get employment in gambling houses. In this respect he was much in the same position as a political leader who is able to get jobs for others with the public officials.

It is true, as stated at page 38 of the brief for the Government, that a number of witnesses testified that they had seen Johnson in some of these gambling houses. Only Cobb, the see-all hear-all tell-all witness, testified that defendant Johnson was in some of these gambling houses several nights a week and that Johnson acted like "the head of the house". (II. R. 350-352.) It is strange

that of the scores of gambling house employees who testified for the prosecution only Cobb saw and heard so much of a confidential character.

The attorneys for the Government are certainly scraping the bottom of the barrel when they take the robbery incident at 4020 West Ogden Club in 1933 as proof of ownership of this club by defendant Johnson in 1936 and thereafter. (P. 39.) Other incidents relied upon to prove ownership are that Johnson was seen walking around the Dev-Lin and the Lincoln Tavern at the time construction was going on in 1935. (Pp. 39-40.) The prosecutors come back to old man Cobb at page 40 of the brief for the Government for proof that Johnson was present at the Dev-Lin in 1936 when the gambling equipment was being moved out and remarked "Well, it is all off," and at page 41 for proof that Johnson in a conversation at the House of Niles, in protest against intercession with him by politicians to get employment for their constituents at the gambling clubs, exclaimed, "I am not a politician by profession, I am running gambling houses." In picking up bits of evidence that helped to carry out the prosecutors' theory that Johnson was "the head man" at these gambling houses, Cobb was a marvel.

Reference is made to the statement of Johnson dated March 27, 1939, (Gov. Ex. O-207,) in which it is claimed he said that as to certain houses where he gambled, "That's my own gambling houses". (Gov. brief, p. 41.) We are surprised that responsible lawyers would represent to this Court that this is an admission by Johnson that he owned gambling houses, when the whole context of the statement is considered. This statement was taken in the office of an Internal Revenue Agent where Mr. Johnson was subjected to questions by three investigators. The stenographer states that she was called into the room after the interview had been in progress for some time

and that she took down such questions and answers as she was directed to take. There is nothing to indicate that Johnson ever saw the statement after it was transcribed. It was not signed by him. (II. R. 407-410.) Johnson began the formal statement with the assertion that he did not own any of the gambling houses which had been under discussion and that he was not in partnership with anybody who was operating a gambling house and that he did not share in the profits of any gambling houses. (II. R. 410.) Later he named the proprietors of the gambling houses where he played. (II. R. 414.) Throughout the interview he stated over and over again that he had no interest in these gambling houses, and yet the attorneys for the Government lift out of this statement what a stenographer has transcribed from notes and vouch for its accuracy. Obviously Johnson said, after naming the places where he gambled, (II. R. 414.) "That's my only gambling houses", or something to the effect that these were the only houses where he gambled, and not, "That's my own gambling houses".

In this connection we should call attention to another straining of the record which we think is unfair to the Court. In trying to show that Hartigan was a mere subordinate of Johnson, reference is made to a note delivered to Hartigan signed "Bill", which read, "Put bearer to work". (P. 70.) On the trial the prosecutor undertook to leave the impression that the "Bill" who signed this note was defendant William R. Johnson, (II. R. 345.) and that attempt at deception is rejected here. In the brief for the Government no reference is made to the cross-examination where the witness makes it clear that the note which he says he handed Hartigan was from William Rosenthal. (II. R. 348.) By the wildest stretch of the imagination one cannot find in the testimony of witness Ehrlich any support for the implication, intended to be

conveyed by this statement in the brief for the Government, that defendant Johnson wrote this note.

Another incident, which is cited as indicating that Sommers was a subordinate of defendant Johnson, is described in the testimony of witness Bissell who borrowed some money from Sommers and who has not repaid it. (III. R. 817-818; Def. Ex. S-30.) This argument is based on the hearsay testimony of Bissell that when he asked for the loan Sommers said he would have to get in touch with the boss and when the witness asked who the boss was Sommers told him it was Mr. Johnson. (Gov. brief, p. 68.) The attorneys do not show the Court that on cross-examination Bissell said that Sommers used a dial phone to talk to the boss, (III. R. 550,) whereas Government witness Moore, a local telephone company manager, testified that the telephone at the Horseshoe Club location was a hand set and that there was no dial phone service in that neighborhood. III. R. 704.

Much is made of the fact that accountant Brantman prepared income tax returns for Johnson through 1935 and prepared returns for some of the other defendants during the same period and that Johnson and three of the other defendants changed to accountant Radomski in 1936 and that some of the others used Radomski's services later. Gov. brief, pp. 41-43.

When Brantman first related the incident of his introduction to Sommers in 1932 he did not say that Johnson introduced him or that Johnson made any reference to his relation to Sommers, but he merely said that Johnson was present and asked him to explain to Sommers about the Government making a drive for returns from persons engaged in illegal pursuits. (II. R. 421.) It was after an overnight recess that the prosecutor brought the witness back to the conversation and led out of him the statement

that Johnson said, "Meet my man Sommers." (II. R. 429.) When the attorneys for the Government resort to this kind of truck to put a man in the penitentiary they are getting pretty low on evidence. On cross-examination Brantman admitted he had no memorandum of conversations he reported as having taken place nine or ten years prior to the trial, (II. R. 435,) and that he could not remember whether the purported conversation regarding the Government drive occurred in 1931, 1932, 1933 or 1934, and that he fixed the time as 1932 because that was the time he started filing returns for some of the co-defendants. (II. R. 436.) He also admitted that in July and August 1940, just preceding the trial, he had about six conferences with the prosecuting attorneys and that altogether he was interviewed twelve or fifteen times over the period of the investigation of Johnson. (II. R. 436.) So many interviews are not required just to learn what a witness knows. While Brantman denied on cross-examination that it had been suggested to him in these many conversations that his license to practice before the Department of Internal Revenue was in jeopardy if he did not testify to suit the prosecutors, he admitted that there had been conversation to the effect that as a man admitted to practice before the Treasury Department he was looked upon as the equivalent of a government representative and should conduct himself accordingly. (II. R. 453.) When Brantman had his first interview with Sommers at the Horseshoe Club it was located at 4750 North Kedzie and was operated by Barnes. (II. R. 439.) Brantman admitted that he had been preparing and filing Barnes' returns and that it might have been Barnes who introduced Sommers to him. (II. R. 440.) It was Brantman's practice to take memoranda of lump figures of income furnished by his gambler clients and then have them sign a blank form of return and then outside their presence he would type into the return over the signature of the taxpayer such description of occupa-

tion and source of income as he chose. (II. R. 441, 445, 448, 450.) Surely the Court will not give much credit to the testimony of a public accountant who by his own admission is guilty of gross unprofessional conduct and who was soliciting defendant Johnson to get him business from other gamblers. As far as we are advised, he has not lost his license to practice before the Treasury Department.

We shall show in answering Question 2 that there is no competent evidence of the *amount* of the income of the gambling houses named in the indictment and that there is no evidence in the record from which one could even guess at the *amount* of profits of these gambling houses, and so we pass without further attention here the generalisms decorated with big figures appearing on page 44 of the brief for the Government.

One would assume from the argument appearing on pages 45 to 50 of the brief for the Government that defendant Johnson had the burden of proving his innocence. We think he has done just that; but he was not required to prove either that he had paid all the taxes due from him or the source of his income. The burden of proof in a criminal case never shifts to the defendant. (*Chaffee & Co. v. United States*, 18 Wall. 516, 545; *McKnight v. United States*, 115 Fed. 972, 974; *Melton v. United States*, 120 Fed. 504; *Mimmer v. United States*, 57 Fed. (2nd) 506, 512.) It is the settled law that unless there is substantial evidence of facts which excludes every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused. (*Paddock v. United States*, 79 Fed. (2nd) 872, 876; *Nicola v. United States*, 72 Fed. (2nd) 780, 786; *McClintock v. United States*, 60 Fed. (2nd) 839, 842; *Dickerson v. United States*, 18 Fed. (2nd) 887, 893; *Grantello v. United States*, 3 Fed. (2nd) 117, 118,) and that where the evidence for the prosecution is as consistent with innocence as with guilt, a

judgment of conviction will not be sustained by a reviewing court. (*Gargotta v. United States*, 77 Fed. (2nd) 977, 984; *Dahly v. United States*, 50 Fed. (2nd) 37, 43; *Vinciguerra v. United States*, 21 Fed. (2nd) 508, 510; *Bishop v. United States*, 16 Fed. (2nd) 410, 417; *Harrison v. United States*, 200 Fed. 662, 664.) The law requires that there be more than some evidence of guilt. (*Towbin v. United States*, 93 Fed. (2nd) 861, 866.) The proof must be of that substantial character which leaves an abiding conviction that the accused is guilty of the offense charged.

All of the testimony respecting the keeping of records of gambling house transactions and destroying these records (Gov. brief, p. 50) was hearsay as to Johnson and was highly prejudicial. It is difficult to conceive of evidence more likely to inflame the minds of the jury against a defendant in a case of this character than evidence that the records of his business have been destroyed. (*Bryan v. United States*, 17 Fed. (2nd) 741, 742.) No proof was received that Johnson had any knowledge of these records or of their destruction.

In the summaries appearing on pages 52 and 53 of the brief for the Government appears the statement that currency was "deposited" at the Albany Park Currency Exchange. No currency was deposited at this exchange or at any other exchange. Exchanges are not depositories; they are mere depots where checks are cashed and money is changed. They receive no deposits and make none except in the carrying out of the service which they sell to the public. The statement that checks were "deposited" by the Lawrence Avenue Currency Exchange at banks with which it did business conveys a false impression. The checks were taken to the bank by the exchange and listed on deposit slips but the manager of the exchange carried away with him the proceeds of the checks. There was no such thing as an account at the Central National Bank

with a balance of \$886,499.30, as the tabulation for 1939 might indicate. This figure is merely the guess of accountant Clifford arrived at by taking 74.87% of some figure. (Gov. brief, p. 60.) If the facts were honestly stated, what is meant to be said is that the aggregate of all the daily check-cashing transactions by the Lawrence Avenue Currency Exchange with the Central National Bank in 1939 was \$886,499.30 or some other large figure.

It is noted that the totals of checks cashed by Sommers, \$111,578.60, and of currency exchanged by him, \$100,000, at the Northern Trust Company in 1936 are included in the computation of "total income of gambling houses". (Gov. brief, p. 52.) These Northern Trust transactions will serve to illustrate the character of all such check-cashing and currency-exchanging transactions, which are the *sole* basis for the *amount* of income charged to Johnson. While the checks cashed during 1936 totalled the sum indicated, there was no proof that a group of checks totalling \$3,000 cashed one day did not represent the same money which Sommers received in cash from a similar group of checks cashed a few days earlier. There is as much reason to assume that the cashing of checks every few days represented a turn-over of the same money as there is to assume that the proceeds of the different batches of checks cashed represented new money. None of the proceeds of these checks were deposited. The currency was carried away by Sommers. The tellers estimated that Sommers came in about eighteen times a year with a bundle of worn currency averaging about \$5,000 and that he would exchange this for new currency, taking about \$3,000 in \$5 bills and about \$2,000 in \$20 bills or \$100 bills. The tellers were unable to say, as obviously they would be, whether the currency exchanged represented one bankroll exchanged eighteen times in 1936 and therefore involved only \$5,000, or whether it represented new money each

time and so totalled about \$90,000. None of this currency was deposited.

We shall not stop here to analyze the check-cashing and currency-exchanging transactions at the various exchanges which are discussed at pages 53 to 64 of the brief for the Government, but shall save this for the appropriate place when we answer the Court's Question 2. We must, however, state emphatically that the statements that the transactions of the Horseshoe, Lincoln Tavern, D. & D. and Harlem Stables were handled "through a single account" (Gov. brief, pp. 27, 29, 50, 58) are not accurate. There was no account. Each check-cashing transaction was separate and distinct from every other. If the check cashed at the exchange was paid in due course the transaction was closed. If the check was not paid, then the one who cashed the check at the exchange was required to make it good. The exchange kept a list of the checks cashed and the last endorser so that it could protect itself against bad checks. We should also say at this point that there is no evidence that Johnson had any knowledge of these currency-exchange transactions or that he received a dollar of the proceeds of the transactions.

At several places in the brief for the Government it is asserted that certain witnesses could not be found. It would have been more accurate to say that the agents did not find (instead of "could not find") these witnesses, considering the feeble effort that was made, as shown by the testimony of Agent Sloan. He testified that he sought to locate Joe Conroy by inquiring of the manager at defendant Johnson's farm on July 17, 1940, by calling at 550 West Roscoe Street, Chicago, July 19, 1940, and by passing that address several times on July 28, 1940, and looking for a car described as belonging to Conroy. This was the total effort to locate Conroy. (III. R. 777-778.) The only effort made to locate Roy Love consisted

of going to the Village of Wheeling, Illinois, August 8, 1940, and sitting at the crossroads in the center of town and watching for him to pass, and on the same day checking the cars at Bon-Air Country Club to see whether his was parked there, and on August 13, 1940, calling at 1642 West 69th Street, Chicago, said to be Love's home. (III. R. 779.) The total effort of this man-hunter to find Frank Vase consisted of talking, August 9, 1940, to the postmaster in the district in which he was supposed to reside. (III. R. 780.) All of this evidence was received over the objection that it carried the implication that defendant Johnson was concealing witnesses. Many other witnesses were interrogated about their knowledge of the whereabouts of persons who were not produced by the prosecution. There was no showing that Johnson had any knowledge of the whereabouts of any of these persons or that he had contacted them or that he had done anything to cause them to absent themselves. Such testimony was highly prejudicial to defendant Johnson and has been repeatedly condemned by the courts. *McWhorter v. United States*, 281 Fed. 119, 120; *People v. Sharp*, 107 N. Y. 427; *Sunderland v. United States*, 19 Fed. (2nd) 202, 208; *People v. Stanley*, 47 Calif. 113, 118.

And now that we have cut away the underbrush, let us examine the evidence count by count to see whether there are any solid trees in the forest,—the "mass of testimony". We shall show that there is no competent evidence that defendant Johnson owned any gambling house and that there is no competent evidence that he received any income from any gambling house. We feel that this examination of the evidence count by count will demonstrate conclusively that the answer to the Court's first question is that the competent evidence in the record did not warrant the submission by the trial court to the jury of the charges made as to defendant Johnson (a) in each of the four substantive counts, or (b) in the conspiracy count.

As to Count 1—Year 1936.

Defendant Johnson reported an income of \$173,382.90 in 1936 and the Government failed to sustain its burden of proof that he had a greater income.

When we come to consider whether Johnson owned any of the gambling houses named in the indictment, the evidence as to each gambling house involved must be considered separately. Proof that Johnson owned all or any part of any gambling house operated by Flanagan, if there were any such proof, would not be proof that he received income from the clubs operated by Sommers or Kelly or Hartigan or any other person. The only evidence which could have any bearing on Johnson's ownership of any gambling house during 1936 would be that testimony which related to conversations, acts or transactions of Johnson during that year or years prior thereto. Conversations, acts and transactions of co-defendants and others outside the presence of Johnson and with which Johnson was in no way connected by proof are hearsay as to Johnson and cannot be considered under the first count of the indictment.

We ask in all sincerity, what evidence is there which shows that Johnson had any interest in Flanagan's establishments in 1936? Flanagan operated a gambling house alternately at 4020 West Ogden and at 2141 South Crawford (now Pulaski) and a service bureau located at 2135 South Crawford (now Pulaski) which was later located at Irving Park and Cicero. The fact that Johnson owned the buildings at 4020 West Ogden and at 2141 South Crawford where Flanagan's gambling house was operated, and leased these buildings to and collected rent from Flanagan, which rent he returned as income, is not proof that Johnson owned the gambling house operated in these buildings. It is proof to the contrary. Certainly Hayes' testimony

that Johnson spoke excitedly to Flanagan concerning a robbery which had occurred at the 4020 Club in 1933, assuming it is true, does not tend to prove that Johnson owned that gambling house in 1936. The testimony of Lenz regarding a purported conversation between him and Johnson and Flanagan at some place on Ogden Avenue at some time in 1935 regarding a dispute between Lenz and Flanagan over the service charge for racing news service, assuming it is true, is not that substantial evidence of ownership of the gambling house operated in Johnson's building at 4020 West Ogden which the law requires in a criminal case. Each of these incidents occurring prior to 1936 is zero as evidence and zero added to zero still makes zero. (*Sorenson v. United States*, 168 Fed. 785.) The income tax returns of Flanagan prepared by Brantman prior to 1936 and by Radomski in 1936 were hearsay as to Johnson, (*Greenbaum v. United States*, 80 Fed. (2nd) 113, 125; *Fox v. United States*, 45 Fed. (2nd) 364, 365; *Brown v. United States*, 298 Fed. 428, 439,) but if they are held to be admissible against him they do not even tend to prove that Flanagan was an employee of Johnson or that Johnson had any interest in Flanagan's establishments. These are all of the incidents appearing in the record relating to Johnson's connection with Flanagan during or prior to 1936. Leaving grounds of incompetency out of consideration, under such evidence can it be seriously contended that the total of the currency exchanged and checks cashed at the Lawndale Currency Exchange by Flanagan and his employee Couch should be charged to Johnson as income in 1936? Except rent paid, not a dollar of Flanagan's money was traced to Johnson. There is no proof that Flanagan received a net income from his gambling house or his service bureau in 1936 which he did not report, and we think it clear that under the most elementary rules there is a complete lack of evidence neces-

sary to support a deduction that Johnson received taxable income from Flanagan's establishments in 1936.

Kelly opened the D. & D. Club at the Lincoln Park Building at Dearborn and Division in 1936 and operated there for a short period. The fact that Kelly rented space in this building, owned by Johnson since 1933, through the rental agent Tavalin, and that Johnson reported such income as he received from this building, is proof that Johnson did not own the gambling establishment of Kelly, rather than that he did. There is no proof that Johnson had any connection with the D. & D. Club in 1936 or that any person, much less Johnson, received taxable income from this gambling house in that year.

Sommers acquired the Horseshoe Club from Mrs. Barnes in 1934 and the Dev-Lin Club from Mr. Wait in 1935. Going back to 1932, we find that Brantman, who had been preparing income tax returns for Johnson since 1925, testified that he told Sommers at Johnson's request that the Government was making a drive for returns from persons engaged in illegal pursuits. This conversation occurred, if at all, at least a year or two prior to the time when Sommers became the proprietor of the Horseshoe and the Dev-Lin. The fact that Johnson and Sommers both switched to Radomski for accountant's services in preparation of their returns in 1936 is a coincidence which proves nothing. The stories of Cobb, Didier and Singer that Johnson helped them get work with Sommers are uncertain as to detail, as is natural because of lapse of time, and, if believed, are not evidence of Johnson's ownership of Sommers' establishments. Neither the workmen who made repairs at Sommers' locations nor the men who furnished bus, transfer and storage service to Sommers testified that Johnson had anything to do with their employment. The Northern Trust Company tellers and the Albany Park Currency Exchange manager testified that

their dealings were with Sommers only and that Johnson was in no way connected with these dealings. This is the proof relied on by the Government to connect Johnson with Sommers' gambling houses in 1936. This evidence does not even establish facts from which the inference of ownership can be drawn, much less the many facts necessary to warrant the conclusion that the aggregate of Sommers' check-cashing and currency-exchanging transactions represented income of Johnson. The attorneys for the Government reach their conclusion by piling inference on inference and hopping from assumption to assumption with wild abandon. That any money handled by Sommers in 1936 ever reached Johnson is pure conjecture.

Hartigan operated the gambling room at Lincoln Tavern during the winter of 1935-1936 and opened the gambling establishment at Harlem Stables in the summer of 1936. The only testimony relied on to connect Johnson with Lincoln Tavern was that of Schultz that he saw Johnson looking over construction work one evening in 1936, and of Atlas that Johnson asked him to install a bookkeeping system in the restaurant at Lincoln Tavern. The only testimony tending to show that Johnson had an interest in Harlem Stables relates to a series of events in August 1936 growing out of the controversy with the Graves, who claimed that they were the owners of the property prior to its being taken over by Hartigan and that they were entitled to the money that Hartigan had paid Earl Jackson as the purchase price. The Graves were so thoroughly impeached by their own admissions on cross-examination and by the testimony of disinterested witnesses that no credit should be given to the fantastic story told by them, but, if we assume that Johnson advanced the money to settle their claims and if we assume that this incident tends to show that Johnson had some interest in Harlem Stables, it certainly falls far short of proving that he

owned this gambling house or that he had any income from it in 1936. There is no proof that the gambling room at Lincoln Tavern and the gambling house known as Harlem Stables yielded a profit in 1936 greater than that returned by Hartigan, much less that Johnson received income from these places which he did not report. No Hartigan money was traced to Johnson.

There is no evidence worthy of credit that these gambling houses were operated as a unit, but if the evidence received for this purpose were accepted with all of the intendments which may be reasonably drawn from it, it would establish not that Johnson was the sole owner or that he had any interest in these houses, but that some of the co-defendants had some working arrangement under which they cooperated in the promotion of their respective businesses in the operation of these houses or some of them. The facts that persons usually employed in gambling houses worked first for one and then for another as business required, that one proprietor took his customers to an open house when his house was closed, and that these gambling house proprietors used one crew of workmen to make repairs, one transfer man, one storage house, and one bus company, do not even tend to prove the charges in Count One of this indictment. These facts prove merely that these co-defendants of Johnson, followed generally a common pattern in the conduct of their respective gambling houses, and if the facts tended to prove any crime it was a conspiracy to violate the laws of the State prohibiting the operation of gambling houses.

There is no competent evidence which shows any income tax due from Johnson in 1936. He paid \$78,550.70 for this year.

As to Count 2—Year 1937.

Johnson reported an income of \$264,177.63 in 1937 and the Government did not prove that he had income in excess of this amount.

Taking into consideration the conversation, acts or transactions of Johnson during 1936 and prior thereto which we have already discussed, and adding those of 1937, we find no competent evidence that Johnson was the owner of the gambling houses operated by his co-defendants, nor even evidence that he was financially interested in these houses. As to Flanagan's places there was no testimony of conversations or acts or transactions of Johnson in 1937. As to Kelly's place, there is the testimony of Grushkin relative to the installation of air-conditioning at the D. & D. Club and the testimony of Tavalin that Kelly's back rent amounting to \$1,800 was settled for \$100. These transactions relating to Johnson's operations as a landlord did not prove that Johnson was the owner of the D. & D. Club, one of his tenants, but they tend to prove the contrary. As to Sommers, Lebbin testified that Johnson spoke to Sommers about giving Lebbin employment at the Horseshoe, and Pollack testified that Johnson offered to return money lost by him when a stick man called crooked dice at the Dev-Lin. We submit that these isolated incidents prove nothing material to the issues. Bissell's testimony that Sommers telephoned the "boss" about making him a loan and that Sommers told him that the boss was Johnson is rank hearsay as to Johnson. As far as Hartigan's places are concerned the only testimony regarding 1937 transactions is that of Cobb, who said he was employed at the Lincoln Tavern after talking with Johnson, but he did not say Johnson hired him. There was no proof that these houses yielded an income in 1937 greater than the aggregate returned by Flanagan, Hartigan, Kelly and Sommers.

There was not a syllable of proof that Johnson received any income from any of these houses in 1937. Johnson paid a tax of \$128,399.72 for this year. The Government wholly failed to sustain its burden of proving that there is any other tax due from Johnson for 1937.

As to Count 3—Year 1938.

Johnson reported an income of \$121,137.65 for 1938. We submit that there is no competent evidence in the record supporting the Government's contention that he had a greater income for this year.

What new testimony is there which tends to connect Johnson with the establishments of his co-defendants? Under pressure of cross-examination by the Court and the prosecuting attorney, Lenz stated that this was the year Johnson called at the offices of Nationwide News Service to discuss the rates that were being charged Flanagan's service bureau. It will be remembered that on cross-examination Lenz was uncertain as to the time of the conference, who was present and what was said, and that he finally stated that Johnson was not present. The five volumes of Nationwide customer accounts, (Gov. Ex. O-11 to O-15,) do not show an account with defendant Johnson. Assuming this discussion occurred, it does not prove that Johnson owned the service bureau and it does not even tend to prove that the service bureau yielded a profit in 1937 or that the owner of the service bureau owned the gambling houses subscribing to its service. There was no evidence even tending to connect Johnson with Flanagan's gambling house at 4020 West Ogden or 2141 South Crawford. As to the D. & D. Club, Tavalin testified that Johnson waived some more of Kelly's back rent and he also testified that Johnson did the same thing with respect to many other tenants. Weeks testified that he got a job at the D. & D. Club after talking with Johnson.

but he made it clear that Kelly employed him and directed his work. The only additional testimony with respect to Sommers' establishments relating to Johnson's connection with them in 1938 was the testimony of Schumacker that Johnson told Sommers to put him to work, the testimony of Kehoe that he was given \$10 a week at the Dev-Lin at Johnson's direction, the testimony of Didier that he was employed at the Horseshoe on the recommendation of Johnson, and the testimony of Rebman that she talked with Johnson about the limit on Red and Black at the Horseshoe. Assuming this testimony to be true, and it was all denied, it does not prove that Johnson owned the Horseshoe or the Dev-Lin and certainly does not even tend to prove that Johnson received any income from these places in 1938 which he did not return. There was no new testimony relating to 1938 which showed that Johnson had any connection with the Hartigan places.

On the theory that Johnson owned these gambling houses and received income from them in 1938, which he did not report, there is a total failure of proof. There is no proof that a dollar of the proceeds from the cashing of checks or exchanging of currency by his co-defendants came into Johnson's hands. Johnson paid a tax of \$34.530.94 for 1938. The Government did not prove that any other tax was due for that year.

As to Count 4—Year 1939.

Johnson reported an income of \$269,048.48 for 1939 and the Government failed in its attempt to prove that he had a taxable income in that year which he did not report.

There is no new proof of ownership from Johnson's conversations, acts or transactions in 1939 which are worthy of characterization as evidence. As to the D. & D. Club there is proof that his agent waived some more of Kelly's back rent, which is the course he followed with

other tenants who could not pay. As to the Horseshoe, there was the testimony of Lang and Wolfson that Johnson helped them get jobs with Sommers, but no proof that Johnson employed them. There was nothing to connect Johnson with the establishments of Flanagan, Hartigan and other co-defendants. The Government's whole case for 1939 is based on the unsupported claim that Johnson owned the Lawrence Avenue Currency Exchange operated by Brown and that the sum total of the numerous transactions shown by the so-called "Reserve for Uncollected Funds Account" on the books of this exchange represented taxable income of Johnson. This is "mere guesswork and speculation." *Benn v. United States*, 21 Fed. (2nd) 962, 963.

There was no competent evidence to support the conclusion that Johnson owed a tax for 1939, above what he paid. There is no proof of the amount of the tax paid but the taxable income reported was \$251,715.47.

As to Court 5—Conspiracy.

The case for the prosecution under the conspiracy count rests entirely on illogical deduction from a mass of disconnected acts, transactions and declarations. This record contains hearsay evidence of conversations and acts and transactions in no way connected with defendant Johnson running back into the 20's, more than ten years before the year of the first substantive offense charged in the indictment. The whole course of the prosecution was to lift itself over the fence by its own bootstraps. (*Glasser v. United States*, 62 Sup. Ct. 457, 467.) It used testimony concerning the acts and declarations of the various co-defendants and others done or made outside the presence of defendant Johnson to establish the existence of a conspiracy and that he was a party to it; and used the same testimony on the assumption of a going conspiracy to

make the proof of the same acts and declarations by alleged co-conspirators done or made out of the presence of Johnson competent evidence against him. This was clearly error. Before the declarations of alleged co-conspirators can be received in evidence against one charged with participation in the conspiracy, it must be shown by independent evidence that a conspiracy existed and that the accused was a party to it at the time the declarations were made. *Logan v. United States*, 144 U. S. 263, 308; *Mayola v. United States*, 71 Fed. (2nd) 65, 67; *Nibbelink v. United States*, 66 Fed. (2nd) 178, 179; *Feigenbutz v. United States*, 65 Fed. (2nd) 122, 125; *United States v. Renda*, 56 Fed. (2nd) 601, 602; *Pope v. United States*, 289 Fed. 312, 315; *Stager v. United States*, 233 Fed. 510, 513.

The whole course of the prosecution is an effort to substitute for proof inference piled upon inference and assumption based upon assumption. The language of Judge Hutcheson in *Symonette v. United States*, 47 Fed. (2nd) 686, so aptly describes the case at bar that we adopt it: (p. 687)

"This is one of those cases, of which the books contain too many instances, of an effort by the government, on a conspiracy indictment, to supply the place of testimony by piling inference upon inference; of an effort to make deduction take the place of proof; and to have the jury, by reasoning backward from non-criminal acts, build up by inference a state of facts to make them criminal, which, if they in fact exist, the evidence ought to have established."

We recognize that a conspiracy may be proved by circumstantial evidence, but it is well established that where the evidence leaves the essential element of an unlawful agreement open to conjecture a verdict for the defendant should be directed. (*United States v. Ross*, 92 U. S. 281,

284; *Mackett v. United States*, 90 Fed. (2nd) 462, 464; *Dowdy v. United States*, 46 Fed. (2nd) 417, 423; *Linde v. United States*, 13 Fed. (2nd) 59, 61.) The mere fact that men are associated in an enterprise, even though it be illegal, is not proof, without more, that a specifically alleged conspiracy exists and that each is a member of that conspiracy. *Wiborg v. United States*, 163 U. S. 632, 659; *United States v. Falcone*, 109 Fed. (2nd) 579, 581; *Dowdy v. United States*, 46 Fed. (2nd) 417, 423.

Even if the evidence showed that one or more of the co-defendants knew that Johnson was attempting to evade the payment of the income tax due from him, which it does not, this would not of itself establish the alleged conspiracy. Mere knowledge of or acquiescence in the illegal act of another, without an agreement to cooperate to accomplish the object of the actor, is not enough to constitute one a party to a conspiracy with him. *Nations v. United States*, 52 Fed. (2nd) 97, 105; *Thomas v. United States*, 57 Fed. (2nd) 1039, 1042; *United States v. Peoni*, 100 Fed. (2nd) 401, 403.

The conspiracy charged in the indictment to defraud the United States of income taxes due from Johnson could have been established only by evidence that Johnson owned the gambling houses operated by the co-defendants, that he received income from them, and that the income received was greater than that reported in his returns, together with proof that Johnson's alleged co-conspirators knew that he had an income greater than that which he reported and that with knowledge of this fact they aided Johnson to evade income tax by helping him conceal his taxable income. Failure to furnish proof to support the substantive counts amounts to failure to furnish proof to support the conspiracy count. The conspiracy count is merely a combination of the charges contained in the substantive counts. There might be a conspiracy to defraud the United

States of income taxes due upon an individual's income which did not amount to an attempt by that individual to evade income taxes for a particular year but that is not this case. There has not been and we do not think there could be in reason a contention made that the conspiracy count was sustained if the proof fails to sustain the substantive counts. If the Government has failed to prove under its gambling house ownership theory that Johnson had a larger income than he reported, as we contend it has, it has likewise failed to prove the conspiracy charged.

We think it clear that the circumstantial evidence on which the Government relies under the conspiracy count does not exclude every other hypothesis but that of guilt and that it was the duty of the trial court to instruct the jury to return a verdict for the accused on Count Five.

Second Question.

In the circumstances of this case, is proof of gross receipts sufficient to establish that net income resulted from the operation of any enterprise in which respondent Johnson is alleged to have been interested?

Under the gambling house ownership theory the only evidence on which the attorneys for the Government rely to show the *amount* of Johnson's income is the evidence which shows the aggregate of the several check-cashing and currency-exchanging transactions. This evidence, we shall show, does not prove the *gross receipts* of the gambling houses, much less the *net income* of these houses. All that this proof tends to show is the money handled by the operators of these gambling houses in a business in which there was a daily turnover of capital. Without the slightest hesitation we answer the Court's second question in the negative.

The result for each of the years as shown by the summaries at pages 52 and 53 of the brief for the Government arises from the assumption that Johnson was the sole owner of the gambling houses operated by his co-defendants, added to the assumption that there was a net income from these gambling houses, added to the assumption that the aggregate of the checks cashed and currency exchanged represented the net income of these gambling houses, added to the assumption that this total amount was paid to Johnson, added to the assumption that the totals for the respective years shown in the summaries represented taxable income of Johnson. This basing of assumption upon assumption is squarely within the condemnation of *United States v. Ross*, 92 U. S. 281, 284; *Wheaton v. United States*, 113 Fed. (2nd) 710, 713; *Mackett v. United States*, 90 Fed. (2nd) 462, 464; *Gargotta v. United States*, 77 Fed. (2nd) 977, 981; *Parlton v. United States*, 75 Fed. (2nd) 772, 776; *Nations v. United States*, 52 Fed. (2nd) 97, 105; *Dahly v. United States*, 50 Fed. (2nd) 37, 43 and *Ribaste v. United States*, 44 Fed. (2nd) 21, 23.

The entire argument of the attorneys for the Government in their attempt to answer this question consists of one guess after another. (Brief, pp. 82-91). They start off with the astonishing statement that without proof of the amount of receipts from gambling houses the jury could reasonably conclude that the receipts were large because no one would engage in this business if it were not profitable. Then they argue that since the gambling house proprietors kept no bank accounts, it is reasonable to infer that the money received from the cashing of checks and the exchanging of currency was all net profit. They next jump to the conclusion that the taking of some of the proceeds of these check-cashing and currency-exchanging transactions in money of large denominations was the equivalent of making bank deposits, and then they make

the final plunge and cite cases which hold that where it is shown that a taxpayer is engaged in a business which is producing an income and large sums of money are traced directly into his bank account and he has filed no return, or a return showing an income much less than the accumulations in his bank account, such evidence may be considered by the jury in determining whether the taxpayer has returned all of his taxable income. Brief, p. 84.

In the first case cited, *Gleckman v. United States*, 80 Fed. (2nd) 394, Gleckman was directly identified with several business enterprises, some legitimate and some illegitimate, and there was direct proof of more income from these business enterprises than Gleckman had reported, and on top of this there was proof of large bank balances accumulated during the indictment years, which indicated income over and above that reported. In holding this evidence competent, the Court said (p. 399): "If it be shown that a man has a business or calling of a lucrative nature and is constantly, day by day and month by month, receiving moneys and depositing them to his account and checking against them for his own uses, there is most potent testimony that he has income, and, if the amount exceeds exemptions and deductions, that the income is taxable." But the Court also held in this case that "The burden was upon the Government to prove that an income tax was due from Mr. Gleckman for the years in question over and above the amount returned,—he could not be guilty of attempting to evade or defeat tax unless some tax was due." Directly applicable to the case at bar is the Court's additional statement, (p. 399,) "nor would the bare fact that he received and cashed a check for a large amount in and of itself be sufficient to establish that income tax was due on account of it." In the case at bar there is not a syllable of proof that Johnson ever received and cashed the checks involved, much less that he got and retained any of the proceeds of the checks.

The second case cited is *United States v. Wexler*, 79 Fed. (2nd) 526. There the proceeds for the operation of an outlaw brewery, which the taxpayer admitted he owned, were traced into his bank account which showed a large and growing balance. It was proved that Wexler lived on a scale beyond his declared income and that he fled when Government agents sought to question him. That is not the case at bar. Here there is no competent evidence that Johnson owned the gambling houses or that he was interested in them. There is no evidence that any proceeds from these gambling houses went to Johnson. There is no evidence that Johnson lived on a scale beyond his declared income and there is no evidence that Johnson ever sought to avoid an audit of the annual returns filed by him over the past twenty years.

Another income tax evasion case where bank accounts were used to show unreported income is *Paschen v. United States*, 70 Fed. (2nd) 491. Among the bank accounts of the accused was one maintained under the fictitious name of "A. B. Anderson". It appeared that large deposits were made in this account in 1927 and 1928 and some of these deposits were identified as items which should have entered into the return of income for 1927. The prosecution contended that since these identified items had not been included in the income reported for 1927 it could be presumed that the large unidentified portion of deposits made in that account during 1927 represented unreported income of Paschen, unless the contrary appeared. As to this contention the Court said: (p. 497)

"The Anderson account was as much Paschen's own account as if it had been carried in his own name. About this there is no controversy. But as to the unidentified balance appearing to have been deposited in the Anderson account during that year, we believe it involves too much of speculation to admit of in-

indulgence in the presumption that, because a few of the items making up the large Anderson account were shown to have been of commercial accounts not included in the tax return, it therefore follows that the large unidentified balance of deposits in the account represents also commercial accruals during the year, not included in the tax return. This contention of the Government cannot be allowed."

If this indulgence in the presumption that the unidentified balance represented taxable income of Paschen "involves too much of speculation", how can it be seriously contended that the indulgence of the attorneys in this case in the assumption that the money handled in the unidentified banking and currency exchange transactions of others was taxable income of defendant Johnson, does not involve speculation of the wildest character? *Without any evidence connecting Johnson with any of these transactions and without any evidence as to the amount involved in the transactions it is sought to charge defendant Johnson with the aggregate of the transactions of the particular year as money received by him during that year.*

The attorneys for the Government next guess that the amounts involved in the check-cashing and currency-exchanging transactions represented the balance of the preceding day's business after the payment of the houses' gambling losses, payroll and other expenses. (Brief, p. 85.) This conclusion does not follow from any established premise, but is a mere assumption based on another assumption. When the gambling house operator exchanged his worn working money for new working money, he had exactly the same amount of money after the exchange as he had before. If the operator accumulated \$1,000 of checks on Monday and cashed them on Tuesday, he could use the proceeds of these checks for cashing other checks and paying losses and meeting the payroll on Wednesday. The

check-cashing and currency-exchanging transactions were mere turn-overs of money and afford no evidence of an accumulation of profits. The totals are not amounts of gross receipts, much less of net income, of these gambling houses.

Much is made of the fact that a substantial part of the currency received in these transactions was in \$100 bills. The most reliable of the witnesses testifying as to check-cashing and currency-exchanging transactions are the Northern Trust Company's officers. They had nothing to fear and they told the facts as nearly as they could remember them. According to their testimony the proceeds of these transactions were taken in currency of various denominations, generally about three-fifths of the total being taken in \$5 bills, about four-fifteenths in \$20 bills and the balance in \$100 bills. (III. R. 604-605.) These large bills were used to pay large winners. (II. R. 218; III. R. 859, 939.) When a gambler finished winner he would be asked to leave his small bills so that they could be used for dealing. (III. R. 816, 879.) None of these \$100 bills were traced to defendant Johnson. While he made large investments with currency he used bills of various denominations ranging from \$10 to \$1,000. The prosecution started out to connect Johnson with the gambling houses by proving that the gambling house proceeds were reduced to \$100 bills and that Johnson bought property and paid for it in \$100 bills, but in this the prosecution utterly failed.

Another point that should be made before we take up the count by count analysis is the inconsistency of the position taken by the attorneys for the Government with respect to the interest which they contend defendant Johnson had in the gambling houses. There are included in the brief for the Government (pp. 52-53) summaries which purport to show the "total income of gambling houses".

Here apparently the "gambling houses" no longer mean the twenty-five houses named in the indictment but mean only the Horseshoe Club, the Dev-Lin Club, the D. & D. Club, Harlem Stables and Lincoln Tavern. In order to sustain the contention that the "total income of gambling houses" for the respective years was defendant Johnson's income, the evidence must show that he was the *sole* owner. However, the attorneys for the Government never make the unequivocal contention that Johnson was the sole owner but content themselves with saying that he had "a dominant interest in the gambling houses", (p. 4,) or that he had "an interest in the gambling houses", (p. 65,) and similar expressions. When it is conceded that Johnson was not the *sole* owner but that he had merely *some* interest or even a *dominant* interest in the gambling houses, the premise for concluding that he received all of the income from such houses is destroyed. It was for this reason that the Circuit Court of Appeals held that the circumstantial evidence on which the Government relied to establish that Johnson was the owner of these gambling houses, considered in the light most favorable to the Government, established only that Johnson had some interest in the gambling houses and did not establish that he was the sole owner and therefore entitled to all of the proceeds. Having found this state of facts, the Court concluded that it was rank speculation to assume that Johnson received from these gambling houses more income than he reported. I. R. 195.

Now let us analyze the summaries of the Government year by year.

As to Count 1—Year 1936.

The prosecutors arrive at the *amount* of "total income of gambling houses" in 1936, which they guess is Johnson's income, by adding the aggregate of check-cashing and

currency-exchanging transactions totalling \$485,294.57.
The details are as follows:

Checks cashed at Albany Park Currency Exchange...	\$255,415.97
Currency deposited at Albany Park Currency Exchange...	6,790.00
\$100 bills received from Lawndale Currency Exchange...	11,600.00
Checks cashed at Northern Trust Company.....	111,578.60
Currency exchanged at Northern Trust Company.....	100,000.00

We shall first consider the Northern Trust transactions because they are first in point of time and the evidence respecting them is from reliable sources. It appears that co-defendant Sommers cashed checks there from January 2 to May 27, 1936. The bank sheets showing these over-the-counter transactions indicated the checks cashed by Sommers by recording him as the last endorser. (Gov. Ex. X-170 and X-171.) The proceeds of these checks were not deposited but were carried away by Sommers. (II. R. 504.) Sommers had been receiving this service since 1934. (II. R. 505.) He came in on an average of two or three times a week. (II. R. 503, 507.) This would be about fifty times during the five months, so that the average total of the checks cashed at each trip would be about \$2200. Assuming all of these checks were cashed by Sommers for gamblers, which is contrary to the fact, what does it prove? It proves merely that persons coming to the Horseshoe or the Dev-Lin to gamble cashed checks with Sommers before they started or after they had lost what currency they brought with them. The checks do not represent profits to Sommers because the maker may have continued to play after he cashed the check and finished winner. When Sommers returned from the bank with the proceeds of the checks he cashed on Monday he had the same money that he had before he cashed the checks for his patrons. When he went back on Wednesday to cash another batch of checks amounting to \$2200, the money in these checks may very well have been the same money that he received from cashing the batch of checks on Monday. Thus we see that counting the item of \$111,578.60

as net income of Sommers' gambling houses in 1936 is just day-dreaming. The figure is not even an amount of gross receipts.

Now let us look at the \$100,000 item of alleged income of Sommers represented by the currency exchanged at the Northern Trust Company. Teller Denning tried to give the facts respecting these transactions with Sommers, but it must be remembered that he was telling of events occurring from two to six years prior to the time he was testifying. The bank had no record of these transactions. (III. R. 605.) It was Mr. Denning's recollection that Sommers came to him about three times a month, for six months out of the year and brought worn currency to be exchanged for new. Sommers would take mostly new fives and possibly a package of twenties. Generally speaking, there would be about \$3,000 in fives and about one time out of three the \$2,000 would be in hundreds. (III. R. 604.) Thus it appears that in each month Sommers would get about 1800 fives, 200 twenties and 20 hundreds, and in the year 1936 he would have gotten about six times this number of each denomination. The witness estimated the total at \$100,000 and that is the figure the Government uses. On cross-examination the witness said, as he was bound to say, that he did not know whether the \$5,000 brought in by Sommers on these trips was one bankroll handled eighteen times in the year, or whether it was an accumulation of eighteen \$5,000 rolls. (III. R. 605.) None of this currency was deposited. We do not believe it can be seriously argued to this Court that there is any proof in this record from these currency-exchanging transactions at the Northern Trust Company in 1936 which shows that Sommers received \$100,000 of income, or any other amount, much less that he paid this sum to Johnson. Obviously this money was just what it purported to be, working money used at the craps tables. When it became

worn it was exchanged. The money taken away by Sommers was in the denominations of money he used in his business and there is simply nothing in the record on which to conclude that more than \$5,000 of currency was actually involved in these transactions. The only reasonable conclusion to draw is that a \$5,000 bankroll was turned over eighteen or twenty times during the year. This knocks the \$100,000 item out of the summary.

Now let us take a look at the item of \$255,415.97 representing the proceeds of checks cashed at the Albany Park Currency Exchange. When the Northern Trust Company got tired of doing a free banking business for Sommers, it was suggested that he make other arrangements for cashing his checks and he went to the Albany Park Currency Exchange and made a deal to have his checks cashed for a fee of 25¢ a hundred. (II. R. 476.) The transactions from June through December 1936 appear on Government Exhibits X-139 to X-145. These records show the amount, the maker, the payee and the last endorser of each check cashed. Of the checks on X-139 which Marcus identified as coming from gambling houses in June, 1936, 213 were made by corporations. It is quite unlikely that any of these checks covered gambling losses. It would appear that these corporation checks were cashed by Sommers or Kelly or Hartigan as an accommodation either to the maker or the payee. Marcus testified that some of the checks which bore Sommers' endorsement were cashed by him for others. (II. R. 496.) A similar situation will appear from an examination of the other six exhibits. There is no proof in the record as to what portion of the checks, identified as cashed by these gambling house operators, were gamblers' checks and certainly no proof that the total of these checks represented gross receipts, much less net income, of these gambling houses. Each day's transaction was separate and distinct from those of every

other day. None of the proceeds were deposited and there is no proof that the proceeds carried away from cashing checks on Monday were not tied up in the checks that were brought back for cashing on Wednesday. If we assume that a batch of these checks was cashed three or four times a week, then in the seven months there would have been about one hundred batches cashed. This would mean that the average of the batch of checks cashed on each visit would be about \$2500. There is nothing to show that the same \$2500 was not turned over one hundred times in these check-cashing transactions to produce the aggregate of \$255,415.97. To argue that there is any proof that this represents net income, or even gross receipts of anyone is attempted self-deception.

The next item of \$6700 is characterized as currency "deposited" at Albany Park Currency Exchange. Exchanges are mere depots for cashing checks and making change and have no facilities for taking deposits. What the attorneys for the Government mean by this item is that it is estimated by agent Clifford that the transactions involving exchange of currency by gambling houses at the Albany Park Currency Exchange in 1936 totalled \$6700. Marcus said these transactions consisted only of exchanging soft bills for new fives, tens, twenties and hundreds. (II. R. 491.) Government Exhibits under X-191 are slips showing transactions between the Albany Park Currency Exchange and the Milwaukee Avenue National Bank. The first of these exhibits bears date July 24, 1936 and shows the deposit of \$5,000 in currency and of ninety checks totaling \$4,933.61. Exhibit X-191 (b) bears date October 18, 1936 and shows the deposit of ninety-three items totalling \$4,423.05, with no indication whether the items were currency or checks or who got the proceeds. It is from these exhibits that agent Clifford guessed that Sommers, Kelly and Hartigan exchanged currency in the

amount of \$6700 in 1936, by assuming that all of the currency "deposited" was worn bills brought in by these men, except a few items that he deducted following days when he assumed Marcus might have taken out more currency than he needed to cash payroll checks. (III. R. 750.) Marcus admitted on cross-examination that he could not tell from his slips how much money Sommers, Kelly and Hartigan exchanged. II. R. 492.

The fifth item, \$11,600, is a supposed total of \$100 bills received by Flanagan from the Lawndale Currency Exchange in his check-cashing and currency-exchanging transactions. There is no use spending time with this item even if it were considered as gross receipts of Flanagan's gambling houses. It was Flanagan's income, and there is nothing to show that the net of \$5,475 returned by him for 1936 was not the total of his net income. There is no proof that Johnson ever received a dollar of this money.

The Government accountant in summing up assumed that the aggregate of all of the check-cashing and currency-exchanging transactions listed at page 52 of the brief for the Government, as well as the aggregate of similar transactions of Andrew Creighton who was acquitted, represented not only the net income of the gambling houses but that it represented the taxable income of the defendant Johnson. He testified over objection that Johnson's income for 1936 was \$547,942.38. (III. R. 742.) Under the most elementary principles, established by an unbroken line of authorities, it was error to permit this Government agent, with the blessing of the trial judge, to decide this case and announce to the jury that defendant Johnson had failed to report all his taxable income and had evaded payment of income tax as charged in the first count of the indictment. (*United States v. Spaulding*, 293 U. S. 498, 506; *United States v. Stephens*, 73 Fed. (2nd) 695, 704;

Wilkes v. United States, 80 Fed. (2nd) 285, 291; *United States v. Cole*, 82 Fed. (2nd) 655, 657.) In *Singer v. United States*, 58 Fed. (2nd) 74, 77, it was held error for the Government accountant to state the conclusion that a defendant's bank deposits were his taxable income. By its ruling the trial court substituted trial by government agent for trial by jury.

The argument of the attorneys for the Government in their present brief is as fantastic as the mental gyrations of this Government agent at the trial. There simply is no proof that the income of the gambling houses named in the indictment was \$485,294.57, or any other determined amount in 1936, and there is a complete absence of evidence that Johnson received a dollar of this money. As the Circuit Court of Appeals well said, (I. R. 194-195,) even if it be assumed that Johnson had some interest in these gambling houses and derived some income from them, there is no proof that the income so derived exceeded the \$173,382.90 which he reported in 1936.

As to Count 2—Year 1937.

The attorneys for the Government built up as the "total income of gambling houses," and so the income of defendant Johnson for 1937, the sum of \$852,890.56 consisting of four items:

Checks cashed at Albany Park Currency Exchange . . .	\$623,690.56
Currency deposited Albany Park Currency Exchange . .	87,100.00
\$100 bills received from Lawndale Currency Exchange . .	42,100.00
Currency exchanged at Northern Trust Company	100,000.00

No useful purpose will be served by taking these various items apart and showing the rottenness at the core. The checks cashed from January to September 1937 are shown on Government Exhibits X-146 to X-154. Of the 965 checks listed on the sheet for July 1937, X-152, which were in any way identical with gambling houses, 306

were made by corporations and the amounts and payees named indicate that most of them were payroll checks. We think it reasonable to conclude that these checks were cashed by Sommers, Kelly or Hartigan as an accommodation to employees of these corporations who lived in the neighborhood and who had no banking connections. It must be remembered that Sommers operated a restaurant on the ground floor at 4721 North Kedzie (Ill. R. 782) and it may be assumed that most of these checks cashed as an accommodation were cashed there. There is no evidence to show what part of the checks cashed by Sommers were cashed in his gambling houses or were given to cover gambling losses, and there is certainly nothing to indicate that the proceeds of these checks represented profits to Sommers.

If gambling house checks were cashed at the exchange every day during the first nine months of 1937, as the manager testified, the average of the daily check-cashing transactions would have been about \$2500. Whether this total of \$2500 in checks from the three customers was turned over 250 times, so there was only \$2500 actually involved in the transactions, or whether there was some profit represented in the checks cashed does not appear from the evidence. It is sheer speculation to say that this \$623,690.56, which is merely the aggregate of all the 200 or more check-cashing transactions, is an amount of net income. There is no proof that it is even the amount of gross receipts.

The \$87,100 mentioned was not "deposited" at the exchange, but merely represents another guess based on Government Ex. X-191 as to the aggregate of many currency-exchanging transactions. There is here no proof of net income, or even gross receipts, of gambling houses. The \$42,100 item is likewise a mere aggregate of the currency-exchanging and check-cashing transactions of

Flanagan and does not represent an accumulated sum identifiable as income of Flanagan's houses. Nothing further need be said about the \$100,000 picked out of the air as an amount of "income," this being merely the aggregate of currency exchanged at the Northern Trust Company as already explained.

Clifford announced to the jury that Johnson's taxable income in 1937 was \$1,047,129.77. (III. R. 743.) He arrived at this figure by adding together not only the transactions shown in the summary at page 52 of the brief for the Government, but also Creighton's transactions at the Mid-City National Bank. Again we point out that there was not a syllable of proof that Johnson received any income from any of these houses, or that he had the slightest connection with any of the transactions which it is assumed revealed the *amount* of gambling house profits and so of Johnson's income. If it be held that the jury could have concluded from the isolated incidents showing Johnson's relations with the co-defendants who operated some of the gambling houses named in the indictment, that he had *some* interest in these gambling houses and received *some* of the profits derived from their operation, "to say that his interest in the gambling houses was such as to entitle him to an income greater than that reported is to indulge in rank speculation," as the Circuit Court of Appeals found. (I. R. 195.) The record is barren of evidence to support the verdict of the jury that Johnson had a greater income in 1937 than the \$264,177.63 which he reported.

As to Count 3—Year 1938.

Clifford testified that Johnson had taxable income in 1938 of \$935,353.80. (III. R. 744.) By excluding the Creighton transactions the attorneys for the Government

now calculate Johnson's income for 1938 to have been \$850,994.20 made up as follows:

Checks cashed at Albany Park Currency Exchange.....	\$376,783.14
Currency deposited at Albany Park Currency Exchange..	141,000.00
\$100 bills received from Lawndale Currency Exchange....	19,800.00
Currency exchanged at Northern Trust Company.....	100,000.00
Checks deposited by Lawrence Avenue Currency Exchange at North Shore National Bank.....	66,305.29
Checks deposited by Lawrence Avenue Currency Exchange at Central National Bank.....	147,105.77

Sommers, Kelly and Hartigan did business with the Albany Park Currency Exchange from January to July 1938. No other defendant patronized this exchange. The transactions are shown on Government Exhibits X-158 to X-164. There is no proof that the total of checks cashed, \$376,783.14, is the amount of gross receipts, much less net income, of the gambling houses. This total does not represent an amount of accumulated receipts but merely an aggregate of many turn-overs. There is not a syllable of proof that \$141,000 of currency was "deposited" by the gambling houses, as the summary represents. As explained under 1936, this item is merely agent Clifford's guess as to the total of the currency-exchanging transactions based on the assumption that all "deposits" of currency shown by the exhibits marked X-191 represented worn bills brought in from the gambling houses. The \$19,800 item and the \$100,000 item are simply more of the same and need no further discussion.

We come now to the Lawrence Avenue Currency Exchange, concerning which the prosecution drew on its imagination to an amazing degree. The whole argument of the attorneys for the Government is based on the assumption that Brown and his partner, who opened and operated the exchange, did not own it; that the exchange was established by defendant Johnson as a private place to carry on the check-cashing and currency-exchanging operations of a string of gambling houses which it is as-

sumed he owned; that all of the checks which were not cashed immediately, but which were sent to the correspondent bank to be cashed were profits from houses operated by Sommers, Kelly and Hartigan, whom it was assumed were merely employed managers for Johnson; and that the aggregate of the transactions carried in a so-called "Reserve for Uncollected Funds Account" represented profits of the gambling houses, and so represented taxable income of defendant Johnson. (Brief, pp. 55-60.) It does not seem to deter these attorneys that there is no evidence in the record worthy of the name, which even tends to establish these assumptions.

The sole basis for the contention that defendant Johnson was identified with the so-called "Reserve for Uncollected Funds Account" on the books of the Lawrence Avenue Currency Exchange is the testimony of the witness Bagshaw that co-defendant Brown referred to this account as the "Johnson Account." (II. R. 535, 566.) If in so referring to this account Brown was referring to defendant Johnson, then the testimony of Bagshaw was clearly hearsay. (*McWhorter v. United States*, 281 Fed. 119, 122; *Pool v. United States*, 97 Fed. (2nd) 423, 425.) If Brown was not referring to defendant Johnson, but to some other person or to some corporation, then the testimony was immaterial. Bagshaw testified, on cross-examination, that he had never seen defendant Johnson prior to the trial and had never had any transactions with him and that his name did not appear on any of the exchange records. (III. R. 542-544.) Bagshaw's testimony on direct examination that Brown told him that the source of the "funds" in the Reserve for Uncollected Funds Account was "Mr." Johnson, (Gov. brief, p. 56,) was qualified on cross-examination when Bagshaw admitted that Brown did not indicate whether the "Johnson" to which he referred was a man or a woman or a

corporation. (II. R. 543.) Referring to Brown's alleged statement to Bagshaw, it is argued that "Although that admission was chargeable only against Brown, the evidence as to the method of business of the exchange permitted the jury to draw the same conclusion against the other respondents as to the nature of the reserve account." Perhaps the jury did use this hearsay testimony to draw just such an unwarranted conclusion against defendant Johnson.

It is argued that Johnson owned the building where the Lawrence Avenue Currency Exchange was located. (Brief, p. 100.) The sole basis for this argument is the testimony of Goldstein, a disreputable lawyer who was under indictment for perjury at the time he testified. (II. R. 65.) It is said that Goldstein's testimony was corroborated by the testimony of two employees of the building. Witness Koop, who had charge of the safe deposit vault, said that her employer was Goldstein and had been since July 20, 1937, and that she accounted to Goldstein for the receipts of the building. (III. R. 587, 590.) Witness Brandt testified that he was employed as janitor of the building by Goldstein and that Goldstein had been his boss since 1937. (III. R. 595, 599.) Johnson testified that he had no interest in this property and had not advanced the purchase price or any part of it. (III. R. 955.) Title to this property was taken in the name of Goldstein's son (II. R. 57) and it still remains there. There is no proof in this record that Johnson ever had anything to do with the operation of this building, received a dime of income from it, paid any taxes on it, or did any other act which would indicate that he was the owner. To bolster their weak case on this point, attention is called to the fact that the attorney for defendant Johnson stated in his opening statement to the jury that Johnson had an interest in this building. (Brief, p.

100.) Floyd E. Thompson, who has appeared for defendant Johnson throughout this litigation, was employed in the afternoon of the day before the case was called for trial and in the short time available he undertook to get this complicated story in his mind and to make an opening statement to the jury on the second day of the trial. An excerpt from the opening statement appears in the record. (Pp. 3-4.) A mere reading of this excerpt shows that it is inaccurately reported. Throughout the trial no reference was ever made to this part of the opening statement and so the error in stating the facts relative to this particular building was not called to the attention of Johnson's attorney. Opening statements of counsel are not evidence. The statement was not an admission made during the course of the trial for the purpose of dispensing with proof, and the prosecution did not rely on the statement as an admission. It made its proof by Goldstein (II. R. 57) and then defendant Johnson denied that he purchased this property. (II. R. 955.) We submit that the facts and circumstances in evidence corroborate Johnson.

Brown's testimony before the grand jury to the effect that defendant Johnson had no connection with the exchange and no interest in any of the transactions of the exchange, (III. R. 674, 675,) was read to the jury by the prosecutors, was uncontradicted and cannot now be disclaimed by the Government. The testimony that records of the exchange were destroyed (III. R. 628, 641, 739,) was hearsay as to Johnson and highly inflammatory and prejudicial. Testimony regarding this exchange was received against all defendants. II. R. 533.

The statement in the summary that checks to the amount indicated were "deposited" in the North Shore National Bank and in the Central National Bank is misleading. Brown took checks to these banks to be cashed and listed

them, but the proceeds of the checks were not deposited. The proceeds of these checks were delivered immediately to the exchange and were in turn delivered to Sommers or others who had presented the checks to the exchange to be cashed. The total \$66,305.29 means merely that this is the aggregate of all of the several check-cashing transactions the Lawrence Avenue Currency Exchange had with the North Shore National Bank, and the total of \$147,105.77 means merely the aggregate of the check-cashing transactions which the exchange had with the Central National Bank in 1938. There were no "funds" in the so-called "Reserve for Uncollected Funds Account." This "account" was merely a running accumulation of memoranda of day by day check-cashing transactions. This "account" was rank hearsay as to defendant Johnson.

Notwithstanding there was no proof that any of this \$850,994.20, indicated as "total income of gambling houses" in 1938, (Gov. brief, p. 53,) was profit to anyone or that Johnson ever received a dollar of it, the evidence relating to the transactions involved was received as proof that the aggregate of the turnover of the moneys represented by the innumerable transactions involved, was part of Johnson's income for the year 1938.

There is no legal evidence of the *amount* of gross receipts of the gambling houses in 1938, and so none of net income.

As to Count 4—Year 1939.

Except for the item of \$40,000 identified as "currency exchanged at Northern Trust Company," which represents merely the aggregate of some ten or twelve transactions, the total of the amount charged to defendant Johnson as income from gambling houses for 1939 was \$886,499.30, represented to be checks "deposited" by the Lawrence

Avenue Currency Exchange at the Central National Bank. We have already seen that no proceeds of checks were deposited at the Central National Bank and that the total given is merely the aggregate of the checks that agent Clifford figured by some round-about process were the checks cashed by gambling house operators at the Lawrence Avenue Currency Exchange in 1939. (Gov. Br., p. 60.) By including the Creighton transactions Clifford testified that Johnson's income for 1939 was \$961,504.77. (III. R. 745.) This was mere guessing. There was no proof of the *amount* of money actually involved in the check-cashing transactions at the Lawrence Avenue Currency Exchange and no proof that any of the proceeds of these checks were gross receipts, much less net income of anyone.

Not a dollar of this money was traced into Johnson's hands. We think it must clearly appear to the Court that there is no proof that Johnson received income in 1939 in excess of the \$269,048.48 which he reported.

By this analysis we think we have demonstrated conclusively that the *sole* basis for the *amount* of defendant Johnson's alleged income,—the aggregate of the check-cashing and currency-exchanging transactions,—is without substance. No amount of income of gambling houses in any year, greater than that reported by Johnson's co-defendants, has been proven. If the evidence of these transactions tends to prove the *amount* of any income, it is gross income. "There can be no presumption that the gross income and the net income from a business would be the same. Experience is quite to the contrary." *Anderson v. United States*, 11 Fed. (2nd) 938, 940.

The answer to the Court's second question must be in the negative.

Third Question.

To sustain the sentence of respondent Johnson on the first four counts on petitioner's "expenditure theory", must the record furnish proof that during some one of the four years referred to in those counts his expenditures exceeded reported income and were made in part from his unreported income received in that particular year?

Income for tax purposes is reported on an annual basis. In a tax evasion case each year constitutes a separate offense because the duty to file a return and pay the tax is one that recurs every twelve months. (*United States v. Sullivan*, 98 Fed. (2nd) 79, 80.) The aim of the income tax laws is to compel a return from each taxpayer in respect to the income which accrues to him during the period of each tax year, and the line is drawn sharply to mark off one tax period from another. (*Helvering v. National Contracting Co.*, 69 Fed. (2nd) 252, 254; *Burnet v. Sanford & Brooks Co.*, 282 U.S. 359, 363.) It seems obvious that this third question of the Court must be answered in the affirmative. The attorneys for the Government agree, (brief, p. 91,) and we shall not extend our argument on this point.

Fourth Question (amplified).

Does the record furnish proof under the expenditure theory that during some one of the four years referred to in the first four counts of the indictment defendant Johnson's expenditures exceeded reported income and admitted cash resources, and that these expenditures were made in part from unreported income received in that particular year?

On the trial the prosecution ignored entirely the annual periods fixed by the Internal Revenue Act for the reporting of income when it came to summarize on its expenditure

theory, and it sought to lump together the whole eight-year period covered by the returns received in evidence. Agent Clifford was permitted to answer over objection that the total amount of income reported over the period from January 1, 1932 to December 31, 1939 was \$1,188,041.85, to which he added \$68,000 as the amount of money defendant Johnson had on hand at the beginning of 1932, making a total of \$1,256,041.85 in cash resources. (III. R. 741.) He was then permitted to state that the total amount of expenditures for the eight-year period was \$1,730,391.39 and that the amount of excess of expenditures over available cash was \$474,349.54. (III. R. 742.) Thus it appears that the prosecution, starting with January 1, 1932 as its base, and without recognizing the annual stops which the law provides, offered proof that Johnson's expenditures during the eight-year period aggregated more than the amount Johnson returned as income for that period. By their accountant the prosecutors said to the jury: "In some year or years during the eight-year period defendant Johnson did not report all his taxable income. You guess which year or years."

After deciding that this prosecution could not be maintained because the indictment was void, the Honorable Circuit Court of Appeals made some comment with respect to the evidence under the expenditure theory and stated the conclusion that as to the second, third and fourth counts of the indictment the proof was sufficient to present a jury question. (I. R. 195.) It is obvious that no analysis was made of the evidence under this theory and no attempt was made to state ruling principles of law. The Circuit Court of Appeals assumed that the chart which the attorneys for the Government had appended to their brief in that court was supported by the record; and it also assumed that where it appeared from the chart that Johnson's expenditures in any year exceeded his income as reported for that year plus what the chart showed he had

on hand at the beginning of that year, it was not necessary for the prosecution to establish by evidence that his expenditures were made in part from his unreported income received in that particular year. Neither of these assumptions were sound. As will appear from the figures used in the opinion below, the chart appended to the brief for the Government in the Circuit Court of Appeals was even further off on the figures relating to expenditures than the chart appended to the brief in this court. What we have said under our answer to Question 3 shows clearly that the Court below was in error in the rule of law it applied. The judgment entered by the Circuit Court of Appeals, reversing the judgment entered by the District Court, was right, notwithstanding the dicta appearing in the opinion following the discussion of the points on which the case was decided.

As to Count 1—Year 1936.

It is conceded that there is no evidence under the expenditure theory to support a conviction under Count One, so the Court's fourth question will be answered in the negative as to this count.

As to Count 2—Year 1937.

Under Count Two the attorneys for the Government assume that defendant Johnson accurately returned his income in every year prior to 1937 and they start off with the assumption that he had cash available for expenditure at the beginning of 1937 only in the amount of \$202,919.89. Even on this assumption, there is no basis for the conclusion that Johnson's expenditures in 1937 exceeded the cash he had available for expenditure.

The statement of receipts and expenditures appended to the brief for the Government is not supported by the record. The time of payment of the item of \$75,000 (assuming

Johnson paid it) included in the expenditures for 1937 is not definitely fixed by the evidence. The prosecution's own evidence shows that the initial purchase price of the Bon-Air Country Club property was paid by Goldstein several months after the latter part of 1937. (II. R. 57.) It was never contended on the trial that Johnson made this expenditure in 1937. On cross-examination agent Clifford included this item of \$75,000 in the expenditures for 1938. (III. R. 764.) There is also included in the summary of expenditures in 1937 \$35,515 for the 9730 South Western Avenue property. The sole basis for the two items which make up this total is the testimony of Goldstein where he states that he received from defendant Johnson a total of \$13,115 which he used for acquiring some vacant lots at 97th and Western. (II. R. 56.) On cross-examination he admitted, when confronted with the deed which he delivered to defendant Johnson showing the conveyance of only a one-half interest in these lots, (II. R. 64,) that the other half interest was owned by William R. Skidmore. (II. R. 65.) From this evidence, only one-half of this item should be charged to Johnson. The only evidence in the record, other than that of defendant Johnson, with respect to the item \$22,400 which covers the building erected on these lots, is that of Nadherny, the architect. He testified that this money was paid to him by William R. Skidmore. (II. R. 79.) He does not fix the time. No witness testifies Johnson made this expenditure in 1937. Clifford included both of these items in Johnson's expenditures for 1937, (III. R. 764,) and he stated on cross-examination that he ignored the testimony of Goldstein on cross-examination that Johnson acquired only half of this property, and the uncontradicted testimony of Nadherny that Skidmore furnished the \$22,400 paid out for improvements. (III. R. 746.) There are other errors in the figures for 1937 which we discuss under the next count, but they need not be considered here.

Eliminating from the summary only these two items for which there is no proof that Johnson made the expenditures in 1937,—\$75,000 and \$22,400,—we have eliminated more than the \$82,727.83 which appears in red and indicates the claimed excess of expenditures over cash receipts and admitted cash resources.

Even agent Clifford, who resolved all doubts against defendant Johnson and excluded or included items to suit his purpose regardless of the record, stated that Johnson had available in 1937 cash resources to meet all expenditures charged to him, if we assume that his living expenses did not exceed \$5,000 a year. (III. R. 759-760.) He merely guessed that Johnson spent more than \$5,000 a year notwithstanding he lived with his mother in an apartment.

Assuming, for the purpose of this argument, that all items of expenditure in and prior to 1937, as shown by the chart, are supported by the record, the prosecution fails to prove that in 1937 Johnson's expenditures were made in part from his unreported income in that particular year. What the summary shows is that Johnson's total expenditures in the six-year period from 1932 to 1937 inclusive were \$985,624.23 and that his cash resources for the same period were \$902,896.40 and that \$82,727.83 of his expenditures were made from unreported income. But the summary does not show in which of the six years he failed to report all of his income. The contention that 1937 is the year when all taxable income was not reported rests solely on the assumption that all taxable income was reported in 1932, 1933, 1934, 1935 and 1936. This assumption that the return for 1937 was false and that the returns for the other five years were true finds no independent support in the supporting record citations appearing at the left of the chart. If recourse is had to other evidence in the record, on which the prosecution relies to support its alternate theory, and this evidence is given the

effect for which the prosecution contends, the falsity and not the truth of the 1936 return is proved. Surely the attorneys for the Government cannot seriously suggest to this Court that it approve as a basis for finding that Johnson had unreported income in 1937 one which they contend the record shows to be false. If, as is contended under the "ownership" theory, Johnson had an income from gambling in 1936 of \$485,294.28 instead of \$145,165.70 as reported, (Gov. brief, p. 66,) then he had at the beginning of 1937, not \$202,919.89, as the chart shows, but \$543,048.47. If the assumption that the return for 1936 is true cannot be indulged, on what theory can the attorneys for the Government be indulged in their assumption that the returns for 1932, 1933, 1934 and 1935 are true? Adopting the same liberty of assumption, which characterizes the contentions of the attorneys for the Government, it can be demonstrated that the false return was filed in 1935, or in any other year back to 1932. All that is necessary to prove by the chart that Johnson made the excess expenditures out of unreported income in the year 1934 is to assume that the returns for 1932, 1933, 1935, 1936 and 1937 were true. We have already seen that no inference of unreported income in a particular year can be drawn from the fact that expenditures exceeded reported income in that year, and so there is no basis in the chart, or the evidence on which it is based, for concluding that the 1937 return and not that for some prior year was false. Our suggestion that it is the 1934 return and not the 1937 return that was false is just as sound logically and just as well-grounded factually as the contention of the attorneys for the Government that it is the 1937 return, and not any of the other five returns, that was false. If a conviction can be sustained for one year out of six on mere proof that over a six-year period expenditures exceeded known cash resources plus reported income, then six convictions on six counts based on claimed evasion for each of the six years

can be sustained. In answering the Court's Question 3 in the affirmative, the attorneys for the Government have admitted that the burden is on the prosecution to prove that in 1937 Johnson's expenditures exceeded his income and were made in part from his unreported income received in that particular year. We submit in all earnestness that the prosecution has failed to point to record support that it has met that burden. To say that the unreported income, required to meet the assumed excess expenditures, was income received in 1937 and not in 1935 or some other of the six years is just guesswork.

This analysis of the record certainly furnishes a negative answer to the fourth question in so far as it relates to the second count.

As to Count 3—Year 1938.

This is the first year that offers any problem under the expenditure theory. When the attorneys for the Government come to consider this year they discard their theory that Johnson had an income of \$485,294.57 in 1936 and of \$852,890.56 in 1937, as they contend under the gambling house ownership theory. (Brief, p. 52.) Instead of the two theories of the prosecution complementing each other, they destroy each other. If Johnson had the income in 1936 and 1937 which the prosecution contends he had under the gambling house ownership theory, then he had abundant funds to meet the expenditures it is claimed he made in 1938. Even if the prosecution abandons its theory of income from gambling houses, the argument under the expenditure theory must fall for 1938 if the prosecution persists in contending that the proof shows under the expenditure theory that Johnson had a greater income in 1937 than he reported. If it be assumed that Johnson's return for 1937 is not a true return, then how can it be said that he did not have accumulated cash at the begin-

ning of 1938? There is no showing of the amount of this alleged unreported income of Johnson for 1937, and it would be quite a coincidence if it were exactly \$82,727.83. By contending that there is unreported income for 1937, the attorneys for the Government have destroyed all basis for their argument for 1938 on their expenditure theory. They cannot point to any proof to justify their starting the "receipts" column for 1938 at zero.

Before a conviction can be sustained on the third count under the expenditure theory, the fact that Johnson had no available cash at the beginning of 1938, or the amount of cash he had available, if any, must be established by evidence. The contention that defendant Johnson spent more money in 1938 than he had available for expenditure rests on the assumption that he started out at the beginning of 1932 with \$78,000 and that his returns for the years 1932 through 1937 were in all respects correct. If there is a lack of evidence to establish definitely the \$78,000 figure or if the record does not support the assumption that in none of these six years Johnson had unreported income, then the base for the case on the third count under the expenditure theory has not been fixed. Even conceding the accuracy of the figures in the expenditures column, if Johnson had unreported income from prior years exceeding the alleged excess of expenditures over cash receipts and admitted resources in 1938, then there is a failure of proof. There is no evidence in the record as to 1938 or any previous year that defendant Johnson did not have cash receipts during the period which he was not required to report. There was no proof of net worth in any year. The prosecution starts from nowhere in 1938 in its effort to show that expenditures made in that year were made in part from unreported income received in that particular year and so it gets nowhere.

We think it will be conceded that if the \$78,000 figure used as the amount of cash on hand at the beginning of 1932 is not established by the evidence, the Government has no base for its chart. This starting figure rests entirely on the testimony of agent Wilson that Johnson told him in January 1934 that on December 31, 1931, he had his bankroll of \$10,000 and \$68,000 in gambling profits in his safety deposit box. (II. R. 10.) We ask a careful reading of the testimony of this witness. We think it proves just what it says and nothing more. Comment is made, with emphasis, that we did not cross-examine this witness, (Gov. brief, p. 99,) but we think a reading of his testimony will confirm the judgment of Johnson's attorney that there was nothing to be gained by cross-examination. Wilson did not say that Johnson stated that he had no assets other than the \$78,000 mentioned. The evidence shows that Johnson paid in 1932 on his income for 1931 substantially the same tax he paid in 1933 on his reported cash receipts of \$74,553.85 for 1932, and so we may assume his reported taxable income was about the same for both years. Johnson testified that during the course of his conversation with agent Wilson some time during 1934, which related to Johnson's 1931 return, there was discussion of an item of \$78,000 plus which appeared on his return as income from gambling, and that in response to a question from Wilson as to what he had done with this money he answered that he kept about \$10,000 of it in his active bankroll and that he put the remainder in his box where he kept his gambling gains. (III. R. 960.) If Johnson's 1931 return did not show this item of ~~\$78,000~~ the prosecution had plenty of opportunity to prove it. We respectfully submit that there is no substantial conflict in the version of this interview as stated by Wilson and as stated by Johnson. Certainly there is reasonable explanation in honest misunderstanding or faulty recollection by Wilson of the apparent difference in the versions

of the interview. No memorandum of this interview was produced at the trial.

There is nothing in the record to corroborate the theory that Johnson started the year 1931 without a dime and that he had at the end of the year only the \$78,000 he had accumulated that year and reported as income. Johnson is abundantly corroborated in his testimony that he must have had between \$140,000 and \$150,000 in his box in addition to the \$68,000 he put in it in 1931. (III. R. 960.) The amount of tax paid by Johnson for the year 1931 would indicate that he reported in that year a taxable income of some \$70,000, which with normal deductions and exemptions would mean cash receipts of about \$80,000. After the audit of his 1931 return in 1934 he paid an additional tax under an agreement that he had income in 1931 of some \$40,000 which he had not reported and about which there was a dispute as to whether it should have been reported. (In passing, it may be said that this is the only time in the twenty years Johnson has been filing returns that he was assessed the negligence penalty of 5%.) According to the income tax paid for 1931, it appears that Johnson had an income in that year of about \$120,000. In addition to this income the prosecution proved on cross-examination of Wait that Johnson invested about \$100,000 in the Lawndale Kennel Club and that Johnson got this money back by arrangement with the Hawthorne Club before 1932. (III. R. 903-904.) Assuming that Johnson had no other available cash in 1931 than the \$100,000 which he got from the Hawthorne Club and assuming an income of about \$120,000 in 1931, he had over \$200,000 cash on hand at the beginning of 1932. He says he had not less than \$218,000 in his box. III. R. 960.

Let us now analyze the case on expenditures for 1938, as made by the statement of receipts and expenditures appended to the brief for the Government. Under cash

receipts there is omitted for 1932 a deduction on the return of \$935.61, for 1933 of \$247.50, and for 1934 of \$990, being the pro-rated portion of commissions paid in 1930 relative to Lincoln Park Building. There is also omitted the non-taxable interest received on the \$5,000 of Liberty Bonds purchased in 1933 of \$162.50 for each of the years 1934 to 1938 inclusive. From the listed expenditures for 1933 should be deducted the \$8,000 discount on the purchase of the \$30,000 face amount of second mortgage notes, and from the listed expenditures for 1934 the \$8,500 which is the excess of the estimate of the cost of the Lincoln Park Building equity. Under expenditures for 1936 the \$10,000 item labeled "Dells Purchase" should be added to the \$12,115.90 in the 1937 column and one-half of the total charged to Johnson in 1937. Under the expenditures for 1937 the \$75,000 listed as the purchase price of the Bon-Air Country Club, and one-half of the \$35,515 listed as the cost of land and improvements at 9730 South Western Avenue should be eliminated. There should also be deducted from the farm expenditures \$4,908.30 which is the unlocated difference between the figures of Government accountant Clifford and Johnson's accountant Sullivan. The purchase price of the Albany Park Bank Building, \$59,887.05, should be deducted because this building was bought by Goldstein and title was taken in the name of Goldstein's son and Goldstein was the sole manager of the building and Johnson made no expenditure in connection with the purchase. It will also be noted that Johnson is charged with \$10,000 living expenses in 1938, notwithstanding his farm books show personal expenditures of \$3,238.14, which is also added. From the 1938 expenditures listed there should be eliminated the Skidmore loan of \$37,000 which was made and paid the same year, and one-half of the payments relative to Bon-Air Country Club amounting to \$184,498.83, made by Skidmore. With these and other corrections, which are supported by the

record, we find that Johnson had available for expenditure in 1938, \$376,201.80 and that he spent \$342,660.04, leaving an excess of cash available over cash spent of \$33,541.76. Facts, our first brief, pp. 18-33.

Under their expenditure theory the attorneys for the Government face the dilemma of assuming that the returns for 1936 and for 1937, both of which they challenge, are true returns or of destroying their base for making their calculations for 1938. Without a syllable of proof to support their assumption they make their comparison of receipts and expenditures as to 1938 by assuming that Johnson started the year without one cent. If the return for 1937 was false, then how much unreported income did Johnson have for that year? If the return for 1936 was false, how much income did Johnson fail to return for that year? If in any year prior to 1938 Johnson had unreported income, then there was available to him in 1938 whatever amount was unreported over and above the amounts which the statement of receipts and expenditures appended to the brief for the Government shows. If it be true that Johnson spent \$488,561.23 in 1938, which we vigorously challenge, then the prosecution has wholly failed to prove that in this year Johnson's expenditures were made in part from unreported income received in that particular year.

The principal item of expenditure listed for 1938 is \$273,940.93 charged to improvements at the Bon-Air Country Club. Charging *all* these expenditures to Johnson is an assumption based upon other assumptions. All contracts were let by Wait or Nadherny and all contractors were paid by Wait, Geary or Lightning Construction Company. Johnson let no contracts and paid no bills. (II. R. 89, 92, 122, 140, 142, 143, 144, 145, 168, 170, 228, 229, 230, 232, 259, 260.) Johnson testified that he made only half of these expenditures (III. R. 956), but, if his

testimony is rejected, there is abundant proof in the record that William R. Skidmore had *some* interest in this property and made *some* of the expenditures, and so there is no basis for concluding that Johnson made *all* of them. The argument that Johnson was the *sole* owner of Bon-Air Country Club and made *all* of the payments in the purchase and improvement of this property rests on the testimony of William Goldstein (II. R. 57) who was shown by cross-examination (limited by the trial Court, as it was, II. R. 67-68) and otherwise to be wholly unworthy of belief. Becker a witness for the prosecution, testified that the original payment was made by Goldstein (III. R. 574), that Goldstein negotiated the deal, and that he wrote a letter to Becker (Def. Ex. J-6) which stated that he was representing "clients". (Note the plural) Becker had no contact or dealings with any other person than Goldstein. (III. R. 575.) Bibow, the agent for the seller, said Goldstein told him that before the deal could be closed he would have to see "a couple of other people". (III. R. 576.) These expressions do not prove that Johnson was one of the clients, but it certainly proves Goldstein was not representing Johnson only. Hare testified that in the early part of 1937 he, as agent for Skidmore, had some negotiations with the agent for the bondholders with respect to the purchase of Bon-Air. (III. R. 914.) Later he took Goldstein to Becker to discuss the deal and Goldstein said that the asking price was too much but that if the bondholders made up their minds to take \$60,000 he would put the money up in escrow. Hare had no further part in the negotiations. (III. R. 915.) Wait testified that Skidmore told him sometime in December 1937 that he was buying this property; that Johnson later became interested and that he became the manager in 1938 for Skidmore and Johnson; that during the operation of the club Johnson would be there nearly every day and night for two or three hours and Skidmore would be there

a couple of times a week; that he got the money to pay bills from Johnson and Skidmore, who were supposed to contribute half and half, but that he did not know exactly the amounts contributed. (III. R. 896-8.) Skidmore furnished Wait many thousand dollars directly. (III. R. 897.) Nadherny, the architect, testified that part of his fees was paid by Skidmore and part by Johnson. (II. R. 81.) Spagat testified that in April 1938 he began work at Bon-Air as catering manager and that both Skidmore and Johnson participated in the management of the club. (III. R. 893-4.) Davis, the painting contractor, testified that during his work there he saw Skidmore around the premises two or three times a week inspecting the construction that was going on and that he had a conversation with Skidmore, Johnson and Wait about their family name shields that were placed in the bar at Bon-Air. During the three months he worked at Bon-Air he often saw Skidmore talk with Johnson and Nadherny. (III. R. 916.) Goldberg, the electrical contractor, testified that he saw Skidmore there on numerous occasions and had conversations with him pertaining to the work he was doing there. On one occasion Wait paid him \$2,500, which was part of \$5,000 that Skidmore gave Wait in his presence at the club. (III. R. 916-17.) Thele, formerly vice-president of a wholesale grocery company, testified that his concern did business with Bon-Air Catering Company beginning in May 1938, and he identified Defendant's Ex. J-7(a-e) (five ledger sheets headed "Skidmore and Johnson, Bon-Air Country Club, Wheeling, Illinois") as records kept in the regular course of business. (III. R. 919-20.) Tatge, who formerly owned the "Greenhouse", testified that when he sold the house there was a pool table in the basement which Skidmore bought and told him to leave. (III. R. 922.) Boeye, the greens keeper, testified that he saw Skidmore on the grounds occasionally, that the grass seed that was used on the club property was delivered by Skid-

more's trucks and that he saw the same trucks haul corn from the Curran farm, which was part of Bon-Air. Skidmore's manager got gasoline at Bon-Air to operate Skidmore's trucks and his tractors which were used on the Curran farm. Boeye's crew hauled some peat moss from Skidmore's farm to the club at the direction of Skidmore. In 1938 Skidmore's trucks hauled about 250 yards of sand to the club's golf course. (III. R. 925.) Rose, employed at Bon-Air as dance producer and director of shows, testified that he consulted with Skidmore and Johnson relative to the shows he produced at Bon-Air and the price of the acts. (III. R. 923.) Meyer testified that while he was doing cement work at Bon-Air he saw Skidmore around the place, and that in the Fall of 1937 he was sent down to The Dells to help tear down some old buildings and the salvaged lumber was loaded onto Skidmore trucks. (III. R. 928.) Allan, of the sales department of the Sinclair Refining Company, identified Defendant's Exhibits J-9(a) to J-9(bbb) (invoices headed "Bon-Air Country Club, W. R. Skidmore, Wheeling, Illinois") as delivery tickets prepared by the driver at the time of delivery (III. R. 929), and he testified that purchases for Bon-Air were under the same quantity discount contract as Skidmore's Pine Tree Farm and Skidmore's Lawndale Scrap Iron Company. (III. R. 930.) Defendant's Exhibits J-11 and J-12 are certificates of title to trucks owned by Bon-Air Country Club, which bear the signature of William R. Skidmore. (III. R. 956.) On this uncontradicted evidence of Skidmore's interest in Bon-Air, we submit that there is no basis for assuming that *all* of the expenditures made at Bon-Air were made by defendant Johnson. Skidmore certainly made *some* of them.

In light of the fact that there is a total failure of proof as to the amount of cash which defendant Johnson had available for expenditure at the beginning of 1938 and of

the fact that there is a failure of proof as to the amount of expenditures made by Johnson in this year, we think the Court's fourth question must be answered in the negative in so far as it relates to the third count.

As to Coun. 4—Year 1939.

Without lengthening this brief by going into the details as to 1939, we respectfully submit that the proof as to this year is subject to the same infirmities as that for the year 1938. Here again the prosecution faces the dilemma of asserting the truth of the returns of Johnson for 1936, 1937 and 1938, all of which they challenge, as well as the truth of the returns for 1932 through 1935, or of destroying their base for calculating that Johnson's expenditures in 1939 exceeded his available cash at the beginning of 1939 plus his reported income for that year. Whatever probative value the income tax returns have, all such returns *prima facie* have the same probative value. Each standing alone proves as much or as little as any other. In the absence of independent evidence showing which is true and which is false, the attorneys for the Government may not arbitrarily assert the truth of some and the falsity of others solely on their contention that all of them cannot be true.

Again the prosecution starts off with the assumption that Johnson did not have one cent accumulated at the end of 1938, but, as we have seen, this assumption rests on other assumptions. To assume that it was the 1939 return and not the one for some other of the eight-year period which was false is pure conjecture. If, as the prosecution contends under its "expenditure" theory, Johnson had unreported income of \$357,079.98 in 1938 and \$82,727.83 in 1937, by what process of reasoning does it assume that he did not have an even greater unreported income in these years and so accumulated cash available

for expenditure in 1939 in excess of the \$150,580.05 which it says was his expended unreported income for 1939? If Johnson had an income of \$485,294.57 in 1936 and of \$852,890.56 in 1937 and of \$850,994.20 in 1938, as the prosecution contends under its "ownership" theory, then Johnson had money to burn in 1939.

The whole argument of the attorneys for the Government under the expenditure theory comes merely to this: In some year between 1932 and 1940 Johnson had unreported income; and without proof of the year in which he filed a false return, it may be assumed that the false return was filed in the year when his expenditures exceeded his reported income in that particular year. This sort of reasoning is without foundation in logic or law. If it is countenanced then a convenient way is opened to the Government to evade the bar of the six-year Statute of Limitations by basing the charge on the year of excess expenditures regardless of the year when all income was not reported.

The apparent deficiency of available cash to meet alleged expenditures might result from any one of a number of errors which would not involve criminal conduct on the part of the taxpayer. There may have been receipts over an eight-year period which the taxpayer was not required to return. There may have been receipts which should have been included in the income reported but which the taxpayer omitted inadvertently or which he may have omitted because he honestly but erroneously believed they should not be included. The apparent deficiency may result from errors in arithmetic or from some other of many other possible errors. Whatever the reason for the apparent excess of expenditures in one or more of the years of an eight-year period over the total of the admitted cash resources plus reported income, we submit that the burden is on the prosecution to establish by legal evidence beyond a reasonable doubt that the defendant is guilty of attempting to evade income tax in an indictment year by proving

that the expenditures made by him in that year were made in part from his unreported income received in that particular year. The rules of burden of proof and quantum of evidence in income tax evasion cases are the same as in other criminal cases. Unless the prosecution produces proof which excludes every other hypothesis but that of guilt, the defendant must be acquitted. No defendant has the burden of proving his innocence. This is a humane provision of the American system of criminal justice because it is recognized that one cannot always prove his innocence, however innocent he may be. No citizen should be deprived of his liberty under a judgment based on mere guesswork.

We respectfully submit that the record shows that Johnson had available for expenditure in 1939 \$303,768.46 and that he spent only \$234,907.62. (Facts, our first brief, pp. 18-34.) All contentions to the contrary are based upon inference piled on inference.

In view of the fact that the record affords no support either for the assumption that defendant Johnson started off with nothing at the beginning of 1939 or that he made all the expenditures which are charged to him, we respectfully submit that the record fails to show that any expenditures made by Johnson in 1939 "were made in part from his unreported income received in that particular year". This being true, it follows that the Court's fourth question must be answered in the negative as to the fourth count of the indictment.

As to Count 5—Conspiracy.

Inasmuch as no contention is made that the conspiracy is proved by the "expenditure" theory, we assume we are not called upon to demonstrate that the verdict on this count cannot be sustained on this theory. It seems too obvious to require argument that the answer to Question 4 as it relates to this count must be in the negative.

Conclusion.

We earnestly contend that the judgment of the Circuit Court of Appeals reversing the judgment of the District Court should be affirmed on the following grounds:

The grand jury that returned the indictment was without authority to act when the indictment was returned. Our first brief, pp. 42-56.

The indictment is void for insufficiency, uncertainty, duplicity and repugnancy. Our first brief, pp. 56-61.

There was a total failure of proof to establish the guilt of defendant Johnson under any count of the indictment and a verdict of not guilty should have been directed. This brief; and our first brief, pp. 61-88.

If the Court should be of the opinion that none of these grounds for affirmance of the judgment of the Circuit Court of Appeals can be sustained, then we earnestly contend that serious and prejudicial error was committed on the trial and that justice requires that a new trial be granted. Our first brief, pp. 88-118.

The attorneys for defendant, William R. Johnson, greatly appreciate the submission of the questions and the opportunity to re-argue their contention that this record does not contain legal evidence to support the conviction under any count of this indictment. We hope that we have been of service to the Court in answering its questions.

Respectfully submitted,

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FILE COPY

IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No. ~~800~~ 5

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM
P. KELLY, STUART SOLOMON BROWN,
Respondents.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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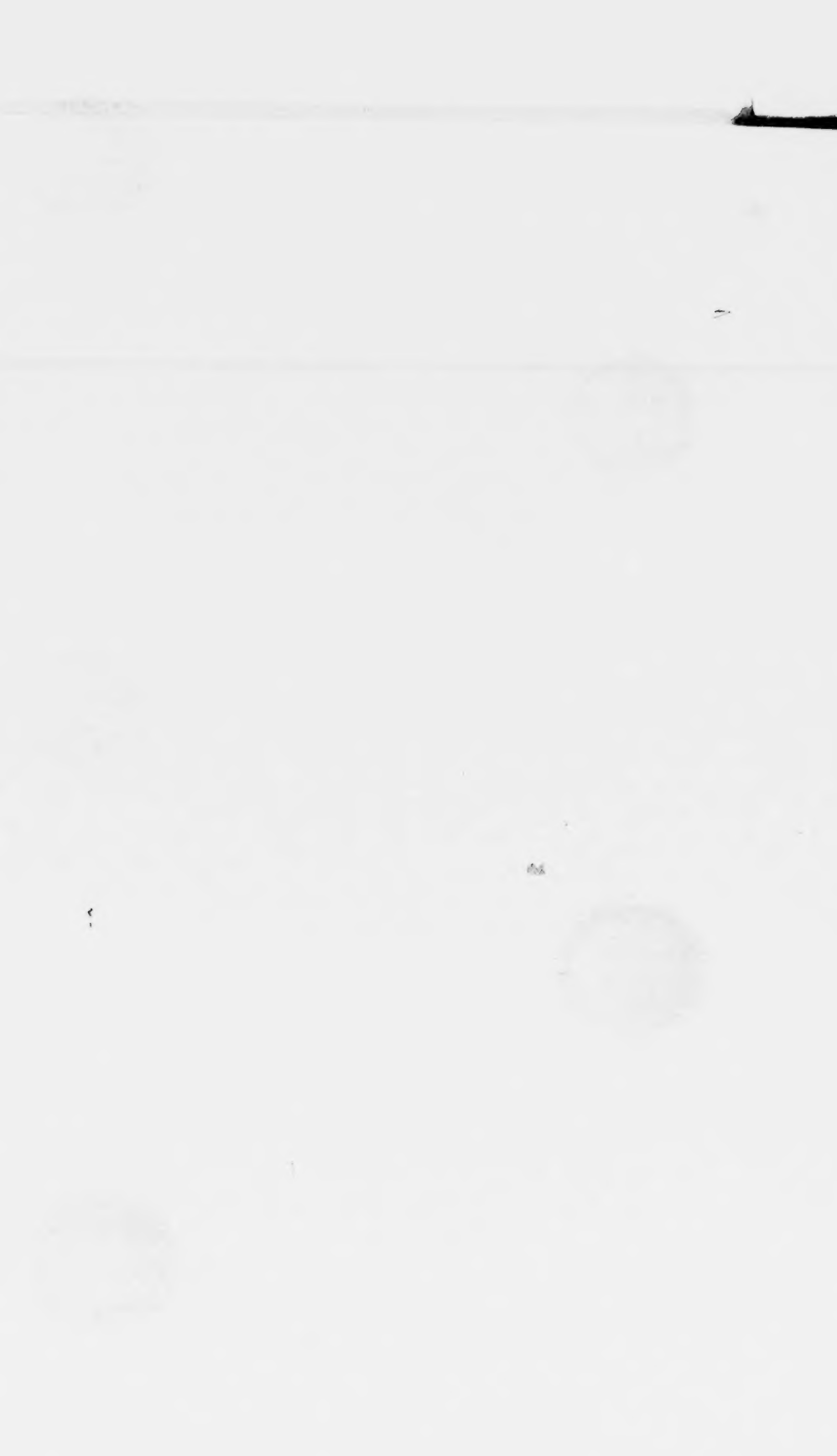
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No. 800

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM
P. KELLY, STUART SOLOMON BROWN,
Respondents.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

Opinion below:

The opinion of the Circuit Court of Appeals (majority Tr. 180; dissenting Tr. 221; on petition for rehearing Tr. 231) is reported in 123 F. 2d at page 111.

The trial court filed no opinion.

Jurisdiction:

The judgments of the Circuit Court of Appeals were entered September 15, 1941. (Tr. 222) A petition for rehearing was denied on November 6, 1941. (Tr. 231) The jurisdiction of this court is invoked under Section

As there is duplication of page numbers in the printed record, we shall refer to the volume entitled Transcript of Record as Tr. to the volumes entitled Bill of Exceptions as R., and to the volume entitled IV Transcript of Record as R. IV.

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and the Rules of Practice and Procedure in Criminal Cases promulgated by this court.

Questions Presented.¹

1. Whether the evidence sustained the gambling house ownership theory of the prosecution.
2. Whether the evidence proved any connection of respondents with Johnson's income tax returns.
3. Whether the order of February 28, 1940, was valid.²
4. Whether counts of the indictment were invalid in charging aiding and abetting as a continuing offense, of the principal crime, charged as a non-continuing offense.
5. Whether counts of the indictment were invalid in charging that respondents were accessories both before and after the fact.
6. Whether the testimony of witness Clifford invaded the province of the jury.

Statement of the Case.

We feel a moderate amplification of the Statement presented by the petition herein, will be of assistance to the Court.

On March 29, 1940, during the March term of court, an indictment was returned by the December 1939 grand jury

1. We agree with the contention of counsel for Johnson, case No. 756, that there is but one question presented, viz., construction of the order of February 28, 1940. However, we have briefly discussed the several questions suggested by the petition for certiorari: this for the information of the Court and to demonstrate that there is no question presented which is entitled to consideration by the Court.

2. The petition admits that the order was "inartistically drawn" (petition p. 13). The petition on which the order was based was similarly defective (Tr. 29). The lower court held the order to be void (Tr. 187).

3. John M. Flanagan, an appellant in the Circuit Court of Appeals, died in August, 1941, while his case was pending and before decision therein. A verified motion, suggesting the death and asking for an order releasing sureties on the bail bond was filed in the Circuit Court of Appeals. The motion was opposed by the government and was overruled by the court without prejudice.

(Tr. 2-25). The first four counts charged Johnson (respondent in Case No. 799) with wilful attempts to evade income taxes for the years 1936 to 1939 inclusive by filing false income tax returns on March 15th of each following year; these counts also charged that these respondents, *Sommers et al.*; did from the beginning of the calendar year involved in each count up to the time of the return of the indictment, aid, abet, conceal, induce and procure Johnson to so attempt to evade said taxes. The fifth count charged a conspiracy throughout the same period of years to defraud the United States of the taxes upon Johnson's income for the years in question.

Johnson was a person of very substantial means. He owned, either alone or jointly with others than these respondents, several pieces of real estate in and about Chicago, some of which were rented to some of these respondents and used by them as gambling establishments and some of which were rented to third persons for business purposes.

These respondents (except Brown who operated a currency exchange) operated gambling houses on premises rented in some instances from Johnson, as stated, and in other instances from third parties.

Johnson reported very large income and paid large taxes thereon for the years in question. These respondents also reported substantial income and paid taxes thereon.

At the trial the government introduced evidence against Johnson on two distinct theories:

(1) By offering proof tending to show that he expended in the years involved more money than he had available for spending, according to the income reported.

This expenditure evidence in no way implicated these respondents.

(2) By undertaking to prove that he was the sole owner

of the gambling houses operated by these respondents, as the basis for a presumption that *all* the checks cashed, money deposited and currency exchanged by the operators of these houses was income, not to them, but which they delivered to Johnson; which said aggregate of assumed income was larger than the amounts reported by Johnson in his returns.

The proof under the second or gambling house ownership theory was entirely circumstantial. The Circuit Court of Appeals held, after careful examination of this evidence and giving it the view most favorable to the government, that at most it indicated that Johnson had *some* interest in the gambling houses, but that the extent of such interest was not disclosed by the evidence. The Court of Appeals said (Tr. 195):

"The evidence does not show that he (Johnson) was the sole owner and therefore entitled to all the proceeds. * * * As already stated, Johnson reported a large income for each of the years in question, and to say that his interest in the gambling houses was such as to entitle him to an income greater than that reported is to indulge in rank speculation. If Johnson had reported no income for those years, a different situation would have been presented."

Speaking of these respondents, the lower court said (Tr. 196):

"These returns (of Sommers *et al.*) disclose a substantial income on the part of the co-defendants, who, according to the government's theory, were mere employees of Johnson in the operation of the various gambling houses. The amount of income reported indicates that such co-defendants had an interest in such houses rather than that they were mere employees of Johnson as contended."

Neither the petition for certiorari nor the dissenting opinion in the Court of Appeals directly takes issue with or attempts to controvert the soundness of the reasoning of the majority last above set forth.

A second reason for holding the evidence under the substantive counts insufficient against these respondents, consisted of the absence of any evidence that these respondents had any connection with the preparation or filing of Johnson's tax returns on March 15th, and the further absence of any evidence of knowledge or information on their part of the contents of Johnson's returns.

Aside from the lack of evidence on essential issues to make a case against these respondents, numerous errors in failure to observe the well-known rules of criminal procedure intervened both before and during trial.

The first in point of time of these errors occurred in the petition of the grand jury and the order based thereon of February 28th, 1940, (Tr. 29) for the purpose of continuing the existence of the grand jury into the third or March term of its existence. A plea in abatement of these respondents (Tr. 32) pointed out that the order violated the terms of the statute (U. S. C. Supp. V. Title 28, sec. 421; Judicial Code sec. 284), in that it purported to authorize the grand jury to continue not only those investigations begun in the December or original term, but also those begun in the February term. The plea also demonstrated that the fourth count was invalid as beyond the authority of the particular grand jury in that it charged an offense committed on March 15, 1940, which could not possibly have been the subject of investigation in the December, 1939, term, which expired more than a month before the offense was committed.

These respondents moved for a rule on the government to answer the plea in abatement (Tr. 44). This was denied and a motion of the prosecution to strike the plea was granted by the trial court (Tr. 46). The Court of Appeals held that the striking of the plea was erroneous and that the plea should have been sustained.

In the Court of Appeals the prosecution endeavored to

save the indictment (and escape the effect of the invalidity of the defective order) by reference to its averment that investigation of the matters charged therein had been begun in the December term of court. In the petitions for rehearing and for certiorari (Petition, pp. 7-8), the government mistakenly contended that these averments were supported by proof consisting of the introduction of part of the grand jury examination of respondent Brown, set forth in full in Government Exhibit O-211, claiming it showed investigation of indictment matters. Government Exhibit O-211 (R. 614), bears on its cover the caption: "In the Matter of William R. Skidmore."

Even more conclusive was the testimony of Government witness Ryan (R. 527), the court reporter who transcribed Brown's examination in the Exhibit O-211. On cross-examination (R. 528), Mr. Ryan testified:

"I got the information to put 'In re William R. Skidmore' on there when the grand jury was impanelled on the first day. * * * I put the words 'In re William R. Skidmore' because the jury was impanelled to investigate matters relating to William R. Skidmore and that only."

This was the only evidence offered or received during the long seven weeks' trial tending to identify the subject matter of investigation by the grand jury in the December term.¹

Proceeding next to the charges against these respondents in the indictment, the lower court held that inasmuch as the first four counts charged Johnson with criminal attempts to evade taxes committed on March 15 of each year, while charging these respondents with aiding and abetting such attempts throughout a long period of time both before and after March 15, viz., from January 1st of the tax year to the time of the return of the indictment, there was a fatal

1 Skidmore, originally a defendant in the indictment, was discussed before trial by the government, without explanation (Tr. 143).

inconsistency between the charges against Johnson and those against these respondents, which inconsistency invalidated the latter.

The Court of Appeals held further (as before stated) that there was no evidence that these respondents had any connection with the preparation of Johnson's tax returns, or even had knowledge or information as to their contents, and that therefore the evidence was insufficient against these respondents under the first four counts.

Finally the Court of Appeals held that there was reversible error in allowing witness Clifford, an accountant employed by the government, to testify as to the amount of Johnson's income and his tax liability, which computation was based upon the exhibits and the other evidence in the case (R. 742-743). The court stated that the questions propounded to this witness did not contain any assumptions nor any hypotheses, and that consequently the jury were not permitted to pass upon the soundness or validity of the premises upon which the answers were based and that therefore the essential elements of proper hypothetical questions by which they are ordinarily saved from invading the province of the jury, were eliminated.

SUMMARY OF ARGUMENT.

1. *The Petition shows no sufficient reason for Certiorari.* No grounds for granting the writ of certiorari as suggested in the Rules of this Court are shown by the petition. The case is not one of new or unusual legal questions but of violation of well-known rules of criminal procedure. The trial was lengthy because of efforts to involve these respondents in the tax affairs of Johnson, with which they had no connection.

The contention that the lower court substituted its opinion for that of the jury as to credibility of witnesses and weight of evidence is without basis. On the contrary, the court merely found material absence of evidence.

2. *Insufficiency of evidence of ownership of gambling houses.* In view of the payment of large taxes by Johnson, it was incumbent upon the Government to prove that Johnson was sole owner of gambling houses involved in order to support presumption that he received all the income therefrom. No such proof was introduced. The lower court held the evidence, considered in the light most favorable to the Government, only indicated some (indefinite) interest of Johnson in the gambling houses. Therefore, there was no proof, direct or indirect, that the income which Johnson (presumably) received from the gambling houses exceeded the large amounts which he reported in his tax returns.

3. *Insufficiency of evidence of connection of respondents with Johnson's tax returns.* There was no proof of any connection of these respondents with Johnson's returns or any knowledge or information on their part of contents of returns. The gist of the charge against Johnson was filing false returns. The authorities hold that to constitute one an accessory he must have knowledge of the principal's crime, and must have an intent to aid the crime.

and that lack of evidence of a "stake" in the principal's affairs is significant. Facts creating liability under the civil law often are insufficient to cause liability under the criminal law, as here.

The claim that the lower court's decision leaves available for enforcement of Revenue Laws only Section 3793 is without basis. The evidence here failed to make a case under either Section 145(b) or Section 3793. The prosecution of other cases with sufficient evidence is not hampered by this decision. The decision here did not limit the application or scope of the statute but merely held that evidence was lacking.

4. *Insufficiency of the allegations of continuing the Grand Jury was not cured by the averments of the indictment and the latter were disproved by the evidence.* The statement in the indictment as to the authority for continuance of the grand jury is contradicted by the statements in the order of February 28th and the petition on which the order was based. There was error in the failure of the government to offer proof to support the indictment in view of this inconsistency, which error was increased by the error of the prosecution in causing defendants' motion to Quash to be stricken, thus preventing evidence by defendants on this issue.

The contention that the proof at the trial of Brown's grand jury examination sustained the averments of the indictment regarding grand jury continuance is without basis. Government Exhibit O-211 and witness Ryan's testimony prove that the original investigation was of Skidmore. The latter was dismissed from the indictment before trial. Prejudice always exists where a grand jury acts without authority.

The lower court's decision as to the fourth count does not impede the administration of the law. The decision merely recognizes a self-evident fact, viz., that the grand

jury in the December term could not possibly be investigating an offense committed on March 15th thereafter. The lower court did not hold that the precise issue and particular defendants must be determined in the original term of the grand jury. Had the court so decided, these respondents all would have been discharged as none of **them** were shown to have been under investigation in the original term.

The claim that this decision conflicts with the purpose of the amendments to the law is without basis. (Section 421.) These amendments extend the time of the grand jury's existence while limiting the objects of the investigation during such extended existence. The Court's decision merely enforces the language of the statute regarding objects of investigation and does not limit the time of existence.

5. *Invalidity of charges of aiding as a continuing crime of an attempt charged as a non-continuing crime.* The indictment charges a definite offense on March 15th by the principal but charges the accessories aided and abetted the commission of the offense both before and after such date, for a period of years. This is a fatally defective charge. The allegations of time should not be considered surplusage but even if so there would be fatal error by the joinder of parties charged in the same count, one with a non-continuing offense and the others with a continuing offense.

6. *Fatal duplicity in charging respondents as accessories before and after the fact.* There is a fundamental difference in law between accessory before and after the fact. One aids commission of the crime; the other conceals the crime or the criminal afterward. The punishment under the Federal statutes is substantially different. Accessories after the fact can receive only one-half the maximum punishment of accessories before the fact.

Joinder of both charges in one court is fatal. Allegations of time should not be considered surplusage.

7. *Error in introduction of Clifford's testimony was fatal.* The so-called hypothetical questions were improperly prepared. They contained no assumptions and no hypothesis. The jury could not know what assumptions were made by the witness in arriving at his computations. The witness expressed his opinion on the ultimate issues before the jury and in doing so weighed the evidence and the credibility of witnesses. This was entirely erroneous and highly prejudicial.

ARGUMENT.¹

1. The Petition Shows No Sufficient Reason for Certiorari.

We submit that no sufficient reason is shown by the petition for granting certiorari—certainly none arising in the cases of the respondents.¹ None of the grounds for the granting of the writ of certiorari which are suggested in paragraph 5 of Rule 38, of the Rules of the Supreme Court, is exhibited by the petition here. The errors of the prosecution which invalidate the convictions of respondents, while fundamentally violative of respondents' rights, were the errors of failing to follow well-known rules of criminal procedure. No novel or difficult question of statutory construction was involved; no difference of opinion between Circuit Courts of Appeals; no important or substantial decision was made at variance with the decisions of this court. In short, the case is a routine case of the commission of routine but fatal procedural errors combined with the absence of evidence of guilt making it the duty of the Court of Appeals to reverse the convictions of these respondents.

Study of this voluminous record, with its thousands of pages and many hundreds of exhibits, its mountainous mass of details of the tedious and distasteful trivia of the gambling business, indicates that the case has reached its precept size and appearance of complexity, through the efforts of the trial prosecutors to involve these minor friends of Johnson in his tax affairs, with which the evidence indicates they had no connection.

In discussing the evidence, the petition inadvertently makes an incorrect statement in the footnote on pages 11-12 to the effect that the lower court substituted its judg-

¹ We shall endeavor to follow the order of argument in the petition for certiorari.

ment for that of the jury, as to the credibility of witnesses and the weight of the evidence. In not a single instance has the Court of Appeals invaded the province of the jury. In every instance in which the lower court held the evidence insufficient, it has pointed to an absolute lack of evidence on a material issue. Nowhere in the majority opinion have we found a statement that a witness was not credible, or that the evidence was not of sufficient weight.

Needless to say, courts of review will examine into the question of the presence or absence of material evidence in the record, and give judgment accordingly. *U. S. v. Falcone*, 311 U. S. 205, 85 L. Ed. 128.

2. Insufficiency of Evidence of Ownership of Gambling Houses.

On the question of ownership of gambling houses, referred to in the footnote mentioned, (petition, pp. 11-12) the lower court held that the evidence (given the view most favorable to the government) indicated an interest of Johnson in the gambling houses, but that there was no evidence to indicate the extent or amount of such interest, and therefore nothing to indicate that the income (presumably) received by Johnson from the gambling houses exceeded the large amounts reported in his tax returns (Tr. 195). The prosecution measured its evidence by the same gauge as if Johnson and these respondents had never filed *any* income tax returns nor paid *any* taxes, in which case proof of any interest of Johnson in the gambling houses might well be said to raise a presumption of participation in income not reported and not tax paid. The lower court merely pointed out that the theory of the prosecution had no application to the case at bar. The petition for certiorari does not meet this issue, but seems to evade it.

3. Insufficiency of Evidence of Connection of Respondents With Johnson's Tax Returns.

As to these respondents the lower court pointed out a fatal absence of evidence that they had any connection with the preparation of Johnson's returns or any knowledge or information as to their contents. Inasmuch as the gist of the wilful attempts charged against Johnson, which these respondents are alleged to have aided, was the filing of false returns which were definitely and specifically described in the indictment, it is manifest that the ruling of the lower court on this point was correct. It is also in accordance with the authorities. *Yenkitchi Ito v. U. S.*, 64 F. 2d 73; *Pontiff v. U. S.*, 9 F. 2d 29; *Hills v. U. S.*, 97 F. 2d 710; *Firpo v. U. S.*, 261 Fed. 851; *Hicks v. U. S.*, 150 U. S. 442. See also *People v. Werblow*, 241 N. Y. 55, 148 N. E. 786 (opinion by Justice Cardozo). The case of *Jin Fuey Moy v. U. S.*, 254 U. S. 189, cited by petitioner is not opposed to the ruling here. There, the only purpose of the wrongful issue of the prescription by the physician-defendant, was to allow the drug addict to obtain the drug illegally. Indeed, on several occasions the physician telephoned the druggist and urged sale of drugs to the addict. Plainly he was accessory to the sales.

In the case at bar however, these respondents had no connection whatever, under the evidence, with Johnson's tax returns, and no knowledge of their contents, must less whether they were accurate or false.

"Those having no knowledge of the conspiracy are not conspirators, *U. S. v. Hirsch*, 100 U. S. 33, 34, 25 L. Ed. 539, 540; *Weniger v. U. S.*, 47 F. (2d) 692, 693; and one who without more furnishes supplies to an illicit distiller is not guilty of conspiracy even though his sale may have furthered the object of the conspiracy to which the distiller was a party but of which the supplier had no knowledge."

U. S. v. Falcone, 311 U. S. 205, 85 L. Ed. 128.

Under the evidence, also, these respondents received no profit if Johnson failed to pay his full income tax, and they suffered no loss if Johnson did pay his full income tax. They had no "stake in the outcome" of Johnson's alleged attempts to evade income taxes.

In *U. S. v. Peoni*, 100 F. (2d) 401, (C. C. A., 2d Cir.) involving sale of counterfeit money by Peoni to A who sold to B who endeavored to pass it, the court after tracing the history of the Federal statute regarding accessories and giving various definitions formulated by the early writers, said at page 402:

"It will be observed that all these definitions have nothing whatever to do with the *probability* that the forbidden result would follow upon the accessory's conduct; and that they all demand that he in some sort associate himself with the venture, that he *participate* in it as something that he wishes to bring about, that he seek by his action to make it a success."

"At times it seems to be supposed that, once some kind of criminal concert is established, all parties are liable for everything that any one of the original participants does, or even for what those do who join later. Nothing could be more untrue." (Italics supplied.)

Similar in principle are *Hicks v. U. S.*, 150 U. S. 442; *Firpo v. U. S.*, 261 Fed. 851; *Hills v. U. S.*, 97 F. (2) 710; *P. v. Barnes*, 311 Ill. 559.

The evidence in all the cases cited went much further toward establishing a connection between the unlawful act of the principal and the so-called accessory than in the case at bar, nevertheless it was held materially insufficient. Clearly, therefore the decision of the Circuit Court of Appeals on this point was correct and in accordance with previous decisions of this court and other courts of review.

The claim that the lower courts' decision here "leaves available for enforcement of the revenue acts in the field

of criminal activity only the crime of aiding and assisting in the filing of a false return," under Section 3793 of the Internal Revenue Code, is without basis. This is a substantial part of the very charge in the present indictment which could more properly have been laid under Section 3793 rather than that endorsed on the indictment. Failure of proof of the charge chosen by the prosecutor in the present case, does not prevent future prosecutions under this or whatever charge may be proper, either under Section 3793 or under Section 145 (b) of the Revenue Act of 1938. The lower court's decision here did not limit the scope of the statute but merely held that evidence on a vital issue was lacking.

4. Insufficiency of Petition and Order Continuing Jury From February Term to March Term Was Not Cured by the Allegations of the Indictment; the Latter Were Disproved by the Evidence.

As heretofore noted, the petition for certiorari in effect admits defectiveness of the order of February 28, 1940, purporting to authorize continuing existence of the grand jury into the March term. The contention of the petition for certiorari that the order was cured "by the solemn statement of the grand jury in the indictment" that it continued to sit into March to finish investigations begun in the December term, is unsound for several reasons. First, the so-called solemn statement of the grand jury in the indictment is contradicted by an equally solemn and more weighty statement of the Forewoman of the grand jury, in the petition of February 28, 1940, that the grand jury's life should be continued to enable it to finish investigations begun in the February (as well as the December) term (Tr. 33).

In addition, there was error on the part of the prosecution in causing the motion to quash (Tr. 28) and plea in

abatement (Tr. 32) of defendants to be stricken, Cf. *Edwards v. U. S.*, 312 U. S. 473, 480, 61 S. C. 669, 674; thereby the government prevented the forming of issues under the motion and plea and the introduction of evidence as to such issues.

An additional reason has come to light because of the tardy contentions of the government in the petitions for rehearing in the lower court, and for certiorari here, to the effect that evidence at the trial of Brown's examination before the grand jury furnished proof that the grand jury investigation in the December term was of indictment matters. As heretofore shown, the proof is affirmatively opposed to this contention. The title on Government Exhibit O-211 (transcript of Brown's grand jury examination) and the testimony of government witness Ryan, (R. 528) the court reporter, establish clearly that the affairs of one Skidmore¹ a nominal defendant were under investigation in the December term by the grand jury. From every viewpoint, therefore, the decision of the lower court was correct on the questions involved in the motion to quash and the plea in abatement.

The reference to the evidence in the Brown contempt case 116 Fed. (2d) 455 (Petition, p. 8) cannot avail petitioner. There was no opportunity for cross-examination, no witness produced the evidence and it was not certified in this case. *Edwards v. U. S.*, 312 U. S. 473, 482, 61 S. C. 669, 674.

The suggestion in the petition for certiorari that these grave errors are not shown to have been prejudicial, hardly needs answer. Cf. *Edwards v. U. S.*, 312 U. S. 473, 61 S. C. 669. The law is well established that except where the continuance of the grand jury is in strict compliance with law, that body has no legal existence beyond the original term. *In re Mills*, 135 U. S. 263, 267; *U. S. v. Rockefeller*,

¹ Skidmore was dismissed from the indictment herein before trial, on motion of the government, without explanation (Tr. 143).

221 Fed. 462, 466; *Ex p. Farley*, 40 Fed. 66, 69; *Nealon v. People*, 39 Ill. App. 481.

Where a statute extends the power of the grand jury to return indictments beyond usual limits (after running of statute of limitations) the statute should be carefully followed. *U. S. v. Durkee Famous Foods*, 306 U. S. 68, 83 L. Ed. 492.

The effort of the petition for certiorari to read into the lower court's decision as to the fourth count, a meaning not properly inherent therein, cannot lend importance to that decision as affecting future cases. The court's decision merely was that in the December term of 1939 an investigation by the grand jury cannot (either legally or actually) be made of an offense not committed until March 15, 1940. The decision cannot, as broadly contended by the petition, impede the thorough investigation of complex cases, by requiring that the "precise issues and particular defendants" involved in the investigation, must be anticipated during the original term of the grand jury. No such contention was made by any of respondents in the lower court, nor did that court so decide. Had it done so, the lower court would have had to hold the indictment invalid as against these respondents, because *there never has been any contention by the government that either "the precise issues" now urged against these respondents, or the identity of these respondents, as future defendants, was anticipated or under investigation by the grand jury in its original term.* To contend that the decision has such effect, attributed to it by the petition, is, we submit, entirely fanciful.

The contentions in the footnote (pages 16-17 of the petition) are likewise without basis. The decision on this point does not limit the time existence of the grand jury. The amendments to the law cited in the footnote all were for the purpose of extending the time of existence of the

grand jury for a specific purpose only, viz, to finish investigations begun in the original term. A permanent or standing grand jury with jurisdiction to investigate generally throughout its existence was not favored by the common law.

The statute itself limits the jurisdiction of the grand jury after the original term; emphasis is given to the limitation by the use of the word "solely" in the law. It is clear that the decision of the lower court on this point carries out the clearly expressed intention of the legislature.

5. Invalidity of Charges of Aiding as a Continuing Crime Of an Attempt Charged as a Non-Continuing Crime.

Under this point the petition seeks to ignore the allegations of the indictment which charges in each of the first four counts, an attempt to evade taxes committed on a specific date by a specific act, viz., filing a false income tax return. The indictment then charges that the accessories aided and abetted Johnson's alleged attempt during each calendar year in which the tax was incurred and up to March 15th of the following year and continuously thereafter up to the date of the filing of the indictment. In short, the charge in the indictment is clearly invalid in charging as a continuing crime one which is not such (*Bowles v. U. S.*, 73 F. 2d 772, 774; *Guzik v. U. S.*, 54 F. 2d 618; *U. S. v. Mathis*, 28 Fed. Supp. 582, 584.)

The petition for certiorari endeavors to ignore the allegations of the indictment by stating that there are other means of attempting to evade taxes than the filing of a false return. However, in this case, such is the charge which the prosecution chose to bring against the respondents. It is therefore entirely immaterial that other indictments in other cases against other defendants, might charge different offenses than this.

The footnote (petition p. 22) contains two further attempts to shift ground and in effect abandon the allegations of the indictment. The first contention is that as it is permissible to charge accessories before the fact as principals, the allegations of time as to the accessories here should be considered as surplusage and without meaning. The contention seems to involve a *non sequitur*. Even if the accessories had been charged as principals, the real principal would be charged with a non-continuing crime and the others (as nominal principals), assuming the same time periods charged as here, would be charged with a continuing crime—a repugnancy almost as great as that exhibited by the present indictment.

In addition the allegations of time evidently are here made deliberately and with considerable care, and neither under the principles of law nor those of fairness to the defendants, should they be considered as surplusage.

6. Fatal Duplicity of Four Counts in Charging in Each That Respondents Were Accessories Both Before and After the Fact.

There is a fundamental difference between the offenses of accessory before and accessory after the fact.

An accessory before the fact is one who aids, abets, counsels, commands, induces, or procures the commission of a crime. By the Federal statute, such an accessory is made a principal. (U. S. C. Title 18, sec. 550.)

An accessory after the fact is one who knowingly conceals the crime or the criminal after the commission of the crime. Wharton Criminal Law (12th Ed.) sec. 281. Brill Cyc of Criminal Law, secs. 243-244.

The principle of law is well established that the joinder in one count of charges requiring different evidence and punishable by different punishments, is fatal duplicity. *Creel v. U. S.*, 21 F. 2d 690; *Ammerman v. U. S.*, 216 Fed.

326; *Allison v. U. S.*, 216 Fed. 329; *Lehman v. U. S.*, 1:7 Fed. 41. Under the Federal statutes an accessory after the fact is punishable by not exceeding one-half the maximum punishment prescribed for principals or accessories before the fact. The careful distinction in the statute between the two classes of accessories and the punishment to be inflicted, is a strong reason for holding that the joinder of the two charges in one count is fatally erroneous.

The claim of the government that these counts charge only the crime of accessory before the fact, cannot be maintained. It is clear that the assistance charged up to and on March 15th, viz., aiding and abetting in the commission of the illegal attempt, was a charge of being accessory before the fact. It is equally clear that the only assistance possible after the crime would be (not to assist in the commission of the crime already committed, but) to conceal the crime or the criminal, or to assist the criminal to evade the consequences of his crime. These two fundamentally different charges are contained in the indictment here in the first four counts. Indeed, the pleader expressly indicates an intention to charge the offense of accessory after the fact by the use of the word "conceal" which is one of the forms of that offense, and is not mentioned in the Federal statute defining the offense of accessory before the fact.

The further contention that the allegation of time of the accessories offense should be regarded as surplusage and in effect considered as stricken from the indictment, is invalid. The petition urges that accessories are never entitled to allegation of time of their alleged offenses. The cases cited do not support this statement. They hold that when charges are made of aiding and abetting without allegation of time, it will be assumed that the time of aiding was the time alleged for the principal offense.

Clearly the decision of the lower court was correct.

7. The Error in the Introduction of Witness Clifford's Testimony Was Fatal.

The introduction of the erroneous and prejudicial testimony of witness Clifford, presents no question meriting the consideration of this court. The situation here was the not uncommon one of failure of the prosecution to prepare its important hypothetical questions properly in order that the answers should not invade the province of the jury. As observed by the Court of Appeals, Clifford "necessarily was required to weigh the testimony on many conflicting points and to decide all controversies in favor of the government." Also "Not a single question by which the objectionable answers were elicited contains any assumption or hypothesis. * * * It follows that the jury were not permitted to pass upon the validity or soundness of the premises upon which the answers were based." (Tr. 200.)

It is clear therefore that the jury had little to do after hearing the testimony of this witness. The lower court said:

"In oral argument before this court counsel for the government in effect conceded that after the testimony of this witness there was nothing left for the jury to decide except the truthfulness of his testimony." (Tr. 200.)

The witness expressed his opinion, based on assumptions not made known to the jury, and involving weighing the evidence and the credibility of witnesses, on the ultimate issues before the jury. Clearly this was error. *U. S. v. Spaulding*, 293 U. S. 498, 506; *Dexter v. Hall*, 82 U. S. 9, 26; *Wilkes v. U. S.*, 80 F. (2d) 285; *U. S. v. Stephens*, 73 F. (2d) 695, 704; *Patrick v. Rice*, 98 F. (2d) 550; *Prentiss v. Chandler*, 85 F. (2d) 733; *Hatch v. U. S.*, 34 F. (2d) 436; *Germantown v. Lederer*, 263 Fed. 672.

Conclusion.

We respectfully submit that there are no questions in this case of such character or importance as to appeal to the discretion of this court to grant certiorari.

Respectfully submitted,

JOHN ELLIOTT BYRNE,

EDWARD J. HESS,

*Attorneys for Jack Sommers, James
A. Hartigan, William P. Kelly and
Stuart Solomon Brown, respondents.*

January, 1942.

APPENDIX.

Criminal Code:

SEC. 332. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal. (U. S. C., Title 18, Sec. 550.)

SEC. 333. Whoever, except as otherwise expressly provided by law, being an accessory after the fact to the commission of any offense defined in any law of the United States, shall be imprisoned not exceeding one-half the longest term of imprisonment, or fined not exceeding one-half the largest fine prescribed for the punishment of the principal, or both, if the principal is punishable by both fine and imprisonment; or if the principal is punishable by death, then an accessory shall be imprisoned not more than ten years (U. S. C., Title 18, Sec. 551).

Internal Revenue Code:

SEC. 3793. * * *

(b) *Fraudulent Returns, Affidavits, and Claims.*—

(1) *Assistance in Preparation or Presentation.*—

Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (U. S. C. Supp. V, Title 26, Sec. 3793.)

Judicial Code:

SEC. 284. * * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than three terms. * * * (U. S. C. Supp. V, Title 28, Sec. 421).

Revenue Act of 1936, c. 690, 49 Stat. 1648, 1703:

SEC. 145. PENALTIES.

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Revenue Act of 1938, c. 289, 52 Stat. 447, 513:

Section 145 (b) is identical with Section 145 (b) of the Revenue Act of 1936, *supra*.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. ~~800~~ 5

THE UNITED STATES OF AMERICA,
Petitioner,
vs.

JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM
P. KELLY, STUART SOLOMON BROWN,
Respondents.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

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IN THE
Supreme Court of the United States

No. 800.

THE UNITED STATES OF AMERICA,
Petitioner,
vs.

JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM
P. KELLY, STUART SOLOMON BROWN,
Respondents.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

OPINION BELOW.

The opinion of the Circuit Court of Appeals (majority 1 R. 180; dissenting 1 R. 221; on petition for rehearing 1 R. 231) is reported in 123 F. 2d at page 111.

The trial court filed no opinion.

JURISDICTION.

The judgments of the Circuit Court of Appeals were entered September 15, 1941 (1 R. 222). A petition for rehearing was denied on November 6, 1941 (1 R. 231). The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and the Rules of Practice and Procedure in Criminal Cases promulgated by this court.

QUESTIONS PRESENTED.

1. Whether the District Court erred in refusing to quash the indictment.

2. Whether the substantive counts of the indictment are fatally defective in, first, charging against respondents several distinct offenses in each count and, second, in failing to bring the charges under the only applicable Internal Revenue law.

3. Whether there was any substantial evidence to support either the substantive counts or the conspiracy count in the indictment.

4. Whether the Court of Appeals weighed the evidence or decided the credibility of witnesses.

5. Whether the verdict against respondents was based upon improper extra-judicial statements and innuendoes of the prosecutors which were placed before the trial jury.

6. Whether the testimony of witness Clifford invaded the province of the jury.

STATEMENT OF THE CASE.

On March 29, 1940, during the March term of Court, an indictment was returned by the December 1929 grand jury (1 R. 2-25). The first four counts charged Johnson (respondent in Case No. 799) with wilful attempts to evade income taxes for the years 1936 to 1939 inclusive by filing false income tax returns on March 15th of each following year; each of these counts also charged that the respondents, Sommers, *et al.*, did, from the beginning of the calendar year involved in each count up to the time of the return of the indictment, aid, abet, conceal, induce and procure Johnson to attempt to evade said taxes. The fifth count (1 R. 17) charged a conspiracy throughout the same period of years to defraud the United States of the taxes upon Johnson's income for the years in question.

Johnson was a person of very substantial means. He owned, either alone or jointly with others than these respondents, several buildings in Chicago.

These respondents (except Brown who operated a currency exchange) operated gambling houses on premises rented in some instances from Johnson, and in other instances from third parties (3 R. 411, 462, 464).

Johnson reported very large income and paid large taxes thereon for the years in question. These respondents also reported substantial incomes and paid taxes thereon.

At the trial the government introduced evidence against Johnson on two distinct theories:

(1) By offering proof tending to show that he expended in the years involved more money than he reported as income in his income tax returns.

This expenditure evidence in no way implicated these respondents.

(2) By undertaking to prove that he was the *sole* owner of the gambling houses operated by these respondents, as the basis for a presumption that *all* the checks cashed and currency exchanged by the operators of these houses was income, not to them, but to Johnson; which said aggregate of assumed income was larger than the amounts reported by Johnson in his returns.

The proof under the second or gambling house ownership theory was entirely circumstantial. The Circuit Court of Appeals held, after careful examination of this evidence and giving it the view most favorable to the government, that at most it indicated that Johnson had *some* interest in the gambling houses, but that the extent of such interest was not disclosed by the evidence. The Court of Appeals said (1 R. 195):

"The evidence does not show that he (Johnson) was the sole owner and therefore entitled to all the proceeds. * * * As already stated, Johnson reported a large income for each of the years in question, and to say that his interest in the gambling houses was such as to entitle him to an income greater than that reported is to indulge in rank speculation. If Johnson had reported no income for those years, a different situation would have been presented."

Speaking of these respondents, the lower court said (1 R. 196):

"These returns (of Sommers, *et al.*) disclose a substantial income on the part of the co-defendants who, according to the government's theory, were mere employees of Johnson in the operation of the various gambling houses. The amount of income reported indicates that such co-defendants had an interest in such houses rather than that they were mere employees of Johnson as contended."

Neither the petition for certiorari nor the dissenting opinion in the Court of Appeals directly takes issue with or attempts to controvert the soundness of the reasoning of the majority opinion last above set forth.

The second reason for holding the evidence under the substantive counts insufficient against these respondents, consisted of the absence of any evidence that these respondents had any connection with the preparation or filing of Johnson's tax returns on March 15th, and the further absence of any evidence of knowledge or information on their part of the contents of Johnson's returns.

The Court of Appeals held that there was sufficient evidence to go to the jury in support of the conspiracy count. Respondents take issue with this ruling.

Aside from the lack of evidence on essential issues to make a case against these respondents, numerous errors in failure to observe the fundamental rules of criminal procedure intervened both before and during trial.

The first of these errors in point of time occurred in the petition of the grand jury and the order based thereon of February 28, 1940 (1 R. 29), for the purpose of continuing the existence of the grand jury into the third or March term of its existence. A plea in abatement of these respondents (1 R. 32) pointed out that the order violated the terms of the statute (U. S. Supp. V. Title 28, sec. 421; Judicial Code sec. 284), in that it purported to authorize the grand jury to continue not only those investigations begun in the December or original term, but also those begun in the February term. The plea also demonstrated that the fourth count was invalid as beyond the authority of the particular grand jury in that it charged an offense committed on March 15, 1940, which could not possibly have been the subject of investigation in the December, 1939 term, which expired more than a month before the offense could have been committed.

These respondents moved for a rule on the government to answer the plea in abatement (1 R. 44). This was denied and a motion of the prosecution to strike the plea was granted by the trial court (1 R. 46). The Court of

Appeals held that the striking of the plea was erroneous and that the plea should have been sustained.

Proceeding next to the charges against these respondents in the indictment, the Court of Appeals held that inasmuch as the first four counts charged Johnson with criminal attempts to evade taxes committed on March 15 of each year, while charging these respondents with aiding and abetting such attempts throughout a long period of time both before and after March 15, viz., from January 1st of the tax year to the time of the return of the indictment, there was a fatal inconsistency between the charges against Johnson and those against these respondents, which inconsistency invalidated the latter (1 R. 190-191).

In addition, the Court of Appeals held that the substantive counts were bad, because they charged these respondents as accessories both before and after the fact (1 R. 191-192).

Finally the Court of Appeals held that there was reversible error in allowing witness Clifford, an accountant employed by the government, to testify as to the amount of Johnson's income for each year from a consideration of all the evidence in the case (3 R. 742-743).

Inasmuch as this case and the Johnson Case No. 799, are here upon one record, and an accurate and necessarily lengthy statement of facts is made in the brief on behalf of Johnson, we respectfully ask leave to adopt said statement, in the interests of avoiding repetition and request that the court consider it as if repeated herein.

SUMMARY OF ARGUMENT.

I.

The District Court erred in refusing to quash the indictment. The government has filed but one brief in this case and that of *United States v. Johnson*, No. 799. Therefore counsel for these respondents respectfully ask leave to refer to argument on behalf of respondent Johnson, case No. 799, and request that the court consider it as if repeated herein.

II.

A. *Each of the first four counts of the indictment is fatally duplicitous in charging against respondents two distinct offenses, namely, aiding and abetting Johnson in the alleged attempt to evade his taxes and also concealing Johnson and or his crime after its alleged commission.* These counts allege substantive offenses against Johnson of attempts to evade taxes for four different years. The counts also charge aiding, abetting and concealing against these respondents for a long period of time before and after the principal's offense. The counts therefore charge the offenses of being accessory both before and after the fact, apparently under Sections 550 and 551 of Title 18 U. S. C. The statutes define substantially different offenses, provable by different evidence and punishable by different punishments. Such joinder of offenses is fatal duplicity. Sections 550 and 551 are derived from the common law. The counts charged legal and actual impossibilities against the aiders. Prejudice to respondents in this erroneous joinder is serious as neither court, counsel nor the jury are informed as to which offense is intended nor what punishment should be inflicted upon a verdict of guilty.

The excuse of surplusage is without basis. A substitution of the word *counsel* for *conceal*, as suggested, and the disregarding of extensive allegations of time would in effect improperly amend the indictment. The claim of surplusage is baseless because the charge and proof of concealment was made an important part of the government case by the allegation of overt acts in the indictment, the specification of matters in the bill of particulars, and by much of the evidence at the trial.

The law is that when a verdict is based upon several charges, one of which is invalid and it is uncertain on which charge the verdict was founded, the judgment cannot stand. In addition, the instructions of the trial court laid stress upon negligence, carelessness, and shutting one's eyes to obvious facts as indicating guilt of the aiders. If pertinent at all, such matters would relate to accessories after and not before the fact.

B. *The first four counts failed to charge violation of the proper Internal Revenue law by the alleged aiders.* Section 3793 (C)(b)(1) of Title 26 provides for the punishment of persons aiding or assisting in the preparation or presentation of any false or fraudulent return under the Internal Revenue laws. This is the same charge which the Government claims is set forth here by the combination of the use of Section 550, Title 18 U. S. C. and Section 145(b) of the Internal Revenue law. Section 3793, being of later date and more specific application, supersedes the earlier and more general statute. It has been so used in the Second Circuit. The Senate Report at the time of its passage said it was designed to discourage specifically the presentation of false returns to the Department. Had this statute been followed by the Government, the fatal duplicity in the indictment and many improper prejudicial averments would probably have been avoided.

III.

A. *There was no evidence of intent or act of respondents to aid Johnson's alleged attempt to evade taxes.* Proof of direct connection of respondents with the principal's offense is necessary. The authorities so decide. The claim that any act, however insignificant, is sufficient as against the alleged aiders is unsound. The authorities so decide. The participation must be substantial and directly connected with the principal's offense, not with antecedent and coincidental actions. The authorities so decide.

There is no proof of willfulness or specific intent to evade Johnson's taxes as against the alleged aiders. The authorities decide that this is necessary.

B. *Lack of evidence to show conspiracy as against these respondents.* No evidence of the conspiracy charge was adduced nor is any mentioned in the government brief. These respondents were entirely ignorant of Johnson's income tax affairs and had no knowledge of nor connection with his returns or the payment or non-payment of his income taxes. The Court of Appeals held that, at best, the evidence indicated merely an interest of Johnson in the gambling houses and that the amount of the interest being uncertain the income presumptively received therefrom was uncertain. Such assumed interest must have been small, as indicated by the trivial nature of the transactions relied on to establish such interest. Moreover, the presumption that Johnson's expenditures in 1936, 1937, 1938 and 1939 were made from current income received in those years is based upon alleged admissions of Johnson and his income tax returns in the years previous to 1936. These alleged admissions and income tax returns are hearsay as to these respondents. The government wishes the court to assume that Johnson's returns up to 1936 were ac-

curate but were inaccurate for every year thereafter. Moreover, if it were presumed that Johnson received any money from respondents' gambling houses, it would also be presumed that this money was included in the large sums reported by him in his returns and that if he received any monies in addition to that shown by his return they were received from sources other than these respondents.

IV.

The Court of Appeals did not weigh the evidence nor decide the credibility of witnesses. The government cites no statement in the Court of Appeals opinion supporting its contention here. The Court of Appeals properly found an entire absence of evidence as to the extent of Johnson's alleged interest in the gambling houses and consequent failure of the presumption that he received all the income therefrom. The cases cited by the government here are not applicable. The evidence leaves it a matter of speculation as to the amount of income if any Johnson allegedly received from the gambling houses.

V.

The verdict against respondents was apparently based upon improper extra-judicial statements and innuendoes of the prosecutors placed before the trial jury. The so-called statements taken by government agents and attorneys from respondents Sommers, Kelly, Hartigan and Brown contained denials by them of charges and insinuations of wrong doing made by their inquisitors. Such denials are inadmissible in evidence under the authorities. In addition, the substance of these statements made suggestions of the interest of Johnson in the gambling houses and suggestions of guilt of respondents not only of gambling but of connection with Johnson's income tax affairs.

Stress was thereby laid on the theory of the prosecution here and also upon the fact that respondents were gamblers and many details of the gambling business. Introduction of part of the transcript of the examination of Brown before the grand jury was gravely prejudicial to all respondents. In this examination three prosecuting attorneys subjected Brown to a scathing and threatening cross-examination combined with critical comments affecting all respondents and intimations of misconduct by them. It was entirely improper to present such matters to the trial jury. This is apparent from a brief description of the nature of such examination. By this, in effect the prosecuting attorneys presented their charges and criticisms against respondents before the trial jury in such a manner as to deprive respondents of their constitutional rights.

VI.

The error in introduction of Clifford's testimony was fatal. We respectfully ask leave to adopt the argument on behalf of respondent Johnson in case No. 799 on this point and request that the court consider such argument as if repeated herein.

ARGUMENT.

I.

The Court of Appeals rightly decided that the District Court erred in refusing to quash the indictment.

The government has filed but one brief in this case and that of *United States v. Johnson*, No. 799. Inasmuch as the argument on behalf of respondent Johnson, in case No. 799 and that on behalf of these respondents is substantially similar with respect to this point, in the interests of brevity, we respectfully ask leave to adopt the argument in the brief of Johnson on the propositions involved and request that the court consider it as if repeated herein.

II.

(A) Each of the first four counts of the indictment is fatally duplicitous in charging against respondents two distinct offenses, viz., aiding and abetting Johnson in the alleged attempt to evade his taxes and also concealing Johnson and or his crime after its alleged commission.

(B) Each of these counts is fatally defective in failing to bring the charges within the only applicable internal revenue law.

(A) Duplicity in the first four counts.

The first four counts each allege substantive offenses against Johnson of attempts to evade taxes for different years. These counts are identical except that each specifies a different year, and, of course, the amounts of Johnson's

alleged income, and tax due, vary from year to year. As to these respondents the first count charges:

"That heretofore, to-wit, during the calendar year 1936 and up to and including March 15, 1937, and continuously thereafter, up to and including the date of the filing of this indictment, * * * defendants, well knowing all the premises aforesaid, did unlawfully, feloniously, willfully, and knowingly, aid, abet, conceal, induce and procure" Johnson to attempt to evade and defeat his income tax for the year 1936.

Each of these counts charges two distinct and different offenses; first, aiding and abetting the commission of the principal's crime (known at common law as being accessories before the fact); and second, concealing the crime or the criminal (known at common law as being accessories after the fact). The two classes of accessories are dealt with in Sections 550 and 551 of Title 18 of the United States Code, which are set forth in the appendix hereto. Inspection of these Sections instantly discloses the fundamental difference between them. These differences are substantially those which pertained to the respective offenses under the common law.

It is clearly evident that the pleader here has set forth in each count charges under both Sections.

Thus, under Section 550, that these respondents "during the calendar year 1936 and up to and including March 15, 1937, did aid, abet, * * * induce, and procure" Johnson to attempt to evade his income taxes.

Under Section 551, that these respondents "continuously thereafter up to and including the date of the filing of this indictment, did * * conceal * *" the said Johnson, etc.

It is clear that the allegation of time from March 15, 1937, to the time of the return of the indictment, March 29, 1940, pertains to the concealment of Johnson, and/or his alleged crime after his alleged offense committed on March

15, 1937, because the only concealing of Johnson that would be a crime under the law, would be concealment after he had committed an offense and not before such commission. The only aiding and abetting (if the term be proper) legally possible after March 15, would be in the nature of concealment of the crime and/or the criminal. Although Johnson is charged with concealing income, records, etc., in each of the first counts, this is not the offense of attempting to evade taxes by filing false returns—the only offense which the government claims is charged against Johnson. *United States v. Rachmil*, 270 Fed. 869, 871; approved *United States v. Noveck*, 273 U. S. 202, 206, 70 L. Ed. 616, 612.

It cannot be doubted that the joinder of charges under Sections 550 and 551, *supra*, in a single count of the indictment is fundamentally improper. This is so because the offenses set forth in the two sections are entirely different and distinct, are provable by different evidence and are punishable by different punishments. *Creel v. United States*, 21 F. (2d) 690, 691; *Allison v. United States*, 216 Fed. 329; *Ammerman v. United States*, 216 Fed. 326; *Lehman v. United States*, 127 Fed. 41.

In the case of *Creel v. United States*, 21 F. (2d) 690, 691, the Court had under consideration a conviction upon counts each of which charged that the defendant did unlawfully sell and furnish intoxicating liquor. The Court, after quoting the provisions of the statute respecting selling and furnishing liquor, continued:

“• • • It is apparent from these provisions that the punishment for the offense of selling is different from the punishment for the offense of furnishing. It is also clear that Congress, by providing different punishments for selling and for furnishing, emphasized the distinctness of the two offenses.

“The case at bar does not fall within that class of cases in which a statute prohibits the doing of a thing in any one of several modes, and in which conse-

quently each of the modes may be alleged in the same count without duplicity resulting. Examples of such cases are *Crain v. United States*, 162 U. S. 625, 16 S. Ct. 952, 40 L. Ed. 1097; *Egan v. United States*, 52 App. D. C. 384, 287 F. 958; *Wright v. United States*, *supra*.

"In the instant case the allegations do not set forth different modes of committing the same offense, but they set forth the commission of two different offenses. It is, of course, possible to furnish without selling, and it is also possible, though not so frequent, to sell without furnishing.

"(3) It is suggested that the word 'furnish' may be disregarded as surplusage. We do not think this can be done. Words adequately charging a distinct offense cannot be rejected as surplusage. If they could, the vice of duplicity in criminal pleading could be practiced with impunity. The language of the information adequately charges two distinct offenses. If the words 'and furnish' are stricken out, there remains an adequate charge of sale. If the words 'sell and' are stricken out, there remains an adequate charge of furnishing. The rule is stated in 31 C. J. 774, 334, as follows: '• • • Where separate offenses are sufficiently charged, none of them can be rejected as surplusage in order to support the charge as of another.' See *United States v. Patten* (D. C.), 2 F. 664. And, even if an amendment to the information were possible before the trial, no amendment was made or prayed for.

"(4) Furthermore, there can be no rider by verdict where the offenses are subject to different punishment. 31 C. J. 879, 551; *Ammerman v. United States*, 216 F. 326 (C. C. A. 8); *John Gaud Brewing Co. v. United States*, *supra*; *People v. Wright*, 9 Wend. (N. Y.) 193; *Reed v. People*, 1 Parker Cr. R. (N. Y.) 481.

"(5) Nor can we assent to the contention that the duplicity was a mere technical defect, to be disregarded under Section 1025, Revised Statutes (U. S. C. Tit. 18, 556 (18 U. S. C. A. 556)), and Section 269, Judicial Code, as amended (U. S. C. Tit. 28, 291 (28 U. S. C. A. 391; Comp. St. 1246)). The defect was

one of substance, and not within the purview of either of those statutes.

"We are constrained to hold, therefore, that there was a joinder of distinct offenses in each of the counts of the information, and that the demurrer should have been sustained on that ground. *John Gund Brewing Co. v. United States*, *supra*; *Ammerman v. United States*, *supra*; *United States v. Smith* (D. C.), 152 F. 542; *United States v. Cleveland* (D. C.), 281 F. 249; *United States v. Dembowski* (D. C.), 252 F. 894.

"Judgment reversed."

The distinction between Sections 550 and 551 is derived from the common law. Section 550 itself defines an accessory before the fact in substantially similar fashion to the common law. Section 551 does not specifically define an accessory after the fact, but the simple definition of that crime at common law was, knowingly concealing the crime or the criminal after the commission of the crime. Wharton, *Criminal Law* (12th Ed.), Sec. 281; Brill, *Cyc. of Criminal Law*, Sections 243-244; *Skelly v. United States*, 76 F. (2d) 483, 487 (10th Cir.).

Under the provisions of these statutes, Sections 550 and 551, and the principles of the common law adopted thereby, the guilt or innocence of an alleged accessory before the fact depends in the present case upon his actions and intent before and on March 15, the date on which it is charged that Johnson unlawfully attempted to evade his tax by filing a false income tax return. On the other hand, the guilt or innocence of an accessory after the fact would depend in the present case upon his actions and intent after March 15.

If it should be contended that the counts are not duplicitous and only charge aiding and abetting before the fact of crime, then they should be held invalid as stating a confused interweaving of legal and actual impossibilities. Thus, the first three counts would charge that the accessories aided and abetted the crime continuously for

years after it had been committed, a legal and actual impossibility; and the fourth count would charge that they concealed Johnson and/or his alleged income for a period of fifteen months before the crime was committed. It was not a legal offense to conceal Johnson before he committed any crime and it was of course both a legal and actual impossibility to conceal a crime before it had been committed.

The principles of the common law have generally been adopted by statutes of the States as well as those of the Federal Government, and the distinction between accessories before and after the fact has been recognized by the highest authority. Judge Cardozo, speaking of one convicted of murder, said in *People v. Galbo*, 218 N. Y. 285, 112 N. E. 1041, 1045:

"If all that he did was to help the murderer to escape he was not a principal but an accessory" after the fact, citing *People v. Farmer*, 196 N. Y. 65, 89 N. E. 462.

In the *Farmer* case, the court said "but the assisting in the secreting of the body after death would not make him a principal but would only leave him liable as an accessory after the fact".

The prejudice to these respondents in the erroneous joinder of charges is not theoretical but actual. The present indictment does not inform the defendants, the trial court, counsel, nor the jury whether the defendants are charged as principals (accessories before the fact) and liable to have punishments of five years' imprisonment and/or \$10,000 fine on each count, or as accessories after the fact and liable only to punishment not exceeding two and a half years and/or \$5,000 fine on each count. In addition, of course, the defendants are not apprised by the indictment as to the nature of the evidence to be presented by the prosecution, that is, as to whether it would be evidence as to aiding and abetting in the commission of

the crime itself or as to whether it would be evidence of concealing the alleged criminal and/or his alleged crime after its commission.

Moreover, it may very well be that the jury convicted on the theory that the aiders were guilty of concealing the alleged crimes of Johnson after commission, while the trial court punished the defendants on the assumption that they had been found guilty by the jury of being accessories before the fact. Cf. *Pierce v. U. S.*, 86 L. Ed. 238 (Dec. 8, 1941).

The claim of surplusage. The government in effect, admits that these counts are not correctly drawn against the aiders but seeks to evade the consequences of the faulty pleading by claiming that the allegations of time describing the period after March 15 in each instance are surplusage (Brief, p. 48).

The brief of the government seems to avoid entirely any justification for the use of the word "conceal" in the indictment¹. This word is nowhere found in the definition of offense of being accessory before the fact and is almost invariably found in the definition of the offense of being accessory after the fact. The contention that these allegations are surplusage and the suggestion that substitution of important words be permitted, seems to ask for an amendment of the indictment forbidden by the Constitution. *Ex parte Bain*, 121 U. S. 1, 30 L. Ed. 849.

The government's pleas of surplusage are obviously an afterthought. Consideration of the indictment, the bill of particulars, and the evidence introduced at the trial, all strongly indicate that the prosecution was desirous of proving concealment of Johnson's alleged offenses after their commission. Thus, the overt acts in the conspiracy count set forth numerous acts of alleged concealment by

1. The government suggests that the word "conceal" in the indictment be read as "counsel" (Brief, p. 43, n. 20.)

the various defendants after the gambling houses shut down and ceased doing business in September, 1939. Whether these acts of concealment were properly designated overt acts is doubtful.

Acts of concealment also form a substantial part of the bill of particulars. All the convicted aiders are charged to have committed many acts of concealment after the gambling houses had closed in September, 1939, at which time, of course, the alleged income therefrom to Johnson ceased. This also was long after the commission of the alleged offenses in the first three counts by Johnson, which are charged to have occurred on March 15 of 1937, 1938, and 1939. Thus, the bill of particulars states that Sommers in December 1939 made a false statement to certain Internal Revenue Agents (1 R. 77), that in January and February of 1940 Sommers testified falsely before the Federal Grand Jury in order to conceal Johnson's income; that Kelly made a false statement to an Internal Revenue Agent in January 1940 and testified falsely before the Grand Jury in January and February of 1940 (1 R. 86); that defendant Hartigan made a false statement to an Internal Revenue Agent in December 1939 and gave false testimony before a Federal Grand Jury in January and February 1940 (1 R. 94); that Brown fled from Chicago in November 1939 to avoid disclosures to Internal Revenue agents, and agreed with Bernice Downey to remove, conceal and destroy some records of the currency exchange operated by them and gave false testimony before the Federal grand jury in January and February 1940 (1 R. 101).¹

The claim of surplusage is defeated also by the nature of a large part of the evidence introduced by the prosecution at the trial, manifestly intended to show concealment

1. Creighton who was acquitted by the jury was charged in the bill of particulars with giving false testimony before the Federal grand jury in August 1939 and January and February 1940 (1 R. 82).

of many of Johnson's alleged acts, rather than aiding and abetting in the filing of false income tax returns.

Thus, although Kelly closed down his gambling business in May 1939 except for "a few days in October" (3 R. 878) and Hartigan (2 R. 465) and Sommers (2 R. 471) closed their places in September 1939, as did Brown his currency exchange (3 R. 624), nevertheless statements were taken from each of the defendants by the government officers in December 1939 and January 1940 and offered in evidence by the prosecution against these defendants (Hartigan 2 R. 462; Sommers 2 R. 467; Brown 3 R. 614; Kelly 2 R. 458).

As each of these respondents was out of business at the time the statements were taken, manifestly they were not contributing to Johnson's income, even assuming the government's theory were correct, and certainly they were not aiding and abetting Johnson's alleged offenses in the first three counts, charged to have been committed in March of 1937, 1938 and 1939 respectively. The defendants therefore at this time were not, even under the Government's theory, acting as accessories before the fact. Acts done after a crime to carry out its purpose, do not constitute the doer an accessory before the fact. *Rizzo v. U. S.*, 275 Fed. 51, 52. The only connection of their statements with Johnson's affairs was on the theory that the statements were attempts to conceal Johnson's share in the alleged ownership of the gambling houses theretofore operated by defendants. The statements were not admissions as they contained no admissions against interests of these respondents but were consistent with the individual income tax returns theretofore filed by each defendant, which the Government also claimed are false. Apparently then the statements were offered by the prosecution on the theory that they were acts by defendants of concealment of Johnson's ownership and past income from gambling houses. This is ap-

parent from the course of examination in all the statements, particularly that of Brown. A large portion of the statement (grand jury examination of Brown) was devoted to efforts to obtain evidence against respondents and intimations by the prosecutors of Brown's alleged concealment of Johnson's interests and transactions, (3 R. 614). Thus, Brown was interrogated by the prosecutors as to: whether he did not know that the records of the Currency Exchange were evidence similar to the gun with which a man is killed; (3 R. 628), whether he should not have saved the records of the Currency Exchange as of value to the Government; (3 R. 628), whether Brown had been cautioned to save the records of the Currency Exchange; (3 R. 629), whether someone "behind the scenes" had been telling Brown what to do during the last two or three months; (3 R. 636), whether someone told Brown what records to keep and what to destroy; (3 R. 658), whether Brown burned all the evidence relating to the gamblers except money orders; (3 R. 673), whether Johnson was ever in the Currency Exchange; (3 R. 674), whether Johnson ever purchased any money orders; (3 R. 675), whether Johnson purchased a check for \$36.20; (3 R. 680), whether Hartigan did not work for Johnson (3 R. 681).

To summarize, therefore, we submit it is incontrovertible from a consideration of the numerous allegations of the indictment and the bill of particulars, the charge of the court, as well as the many items of so-called evidence introduced by the prosecution at the trial, that reliance on acts of concealment or failure to disclose guilt after the alleged crime, formed an important part of the case which the prosecution presented and by which it persuaded the jury to return the verdict of guilty and that, therefore, the claim now advanced that these allegations of the indictment should be rejected as surplusage, should not be approved by this court.

Inasmuch therefore as the verdict on the first four counts is based on a combination of two charges, one of which at least is invalid, and as it is uncertain on which charge the verdict is based, the convictions cannot stand. *Pierce v. U. S.*, 86 L. Ed. 238 (Dec. 8, 1941); *Stromberg v. California*, 283 U. S. 366, 368, 75 L. Ed. 1117, 1122; *Nash v. U. S.*, 229 U. S. 373, 57 L. Ed. 1232.

The great confusion in the indictment, bill of particulars, the evidence and the charge of the court, with resulting embarrassment and prejudice to respondents, was increased by the duplicity of charges against Johnson. Each of the first four counts charged an attempt to evade taxes by filing a false income tax return on March 15th of each year. This constitutes an unlawful attempt under the Revenue law. (*U. S. v. Rachmil*, 270 Fed. 869, 871.) These counts also charge failure to pay tax on March 15th, which is also probably an unlawful attempt, but a different one from that of filing the return. Therefore, there is duplicity here. Also, the counts charge as a means of the offense of attempting to evade taxes the making of a false return (not the filing) and the failure to keep records. These are not criminal attempts. (*U. S. v. Rachmil*, 270 Fed. 869, 871.) Therefore, they are charges of offense which are misdemeanors under Section 145(a) of the Revenue Act in question. Thus, against Johnson are charged two distinct attempts which are felonies and two distinct other offenses which are misdemeanors. It follows, therefore, that these respondents are charged with aiding and abetting two distinct felonies of the principal defendant alleged to have been committed on March 15th of each year and two distinct misdemeanors, one committed shortly before March 15th and the other committed continuously over a long period of time not specified in the indictment but evidently consisting of a combination of two periods, one period the same period of one year and two and one-half months before March 15th of each year and a period varying from about

two weeks in the fourth count to more than three years in the first count *after* March 15th of each year.

Which one or more of these offenses the jury considered proved against these respondents is a matter of utter speculation and conjecture.

The uncertainty as to the basis for the verdict is increased by consideration of the trial court's charge which gives indications of suggestion by the prosecution.

The charge, 3 R. 1013-1014, in its reference to the aiders mentions several supposed elements of the offense of attempt to evade taxes, such as carelessness or negligence, shutting one's eyes to obvious facts, failure to use intelligence that one has, etc. No time was mentioned in the charge in this connection. These conditions in the nature of omissions were not elements of the offense of wilful attempt. The jury may well have supposed however, that carelessness or negligence or shutting one's eyes, after the fact of Johnson's supposed crimes, would support a verdict of guilt. Therefore, under the doctrine of *Pierce v. U. S.*, 86 L. Ed. 238 (Dec. 8, 1911) and like authorities, the verdict should not stand.

B. The first four counts failed to charge violation of the appropriate internal revenue law by the aiders.

The indictment purports to charge these respondents, as stated before, under the statutes of general application punishing accessories before and after the fact (18 U. S. C. A. 550, 551). However, it appears that Sec. 550 regarding accessories before the fact has been superseded by 26 U. S. C. A. 3793(C)(b)(1) providing that:

"Any person who willfully aids or assists in, or procures, counsels or advises, the preparation or presentation under, or in connection with any matter arising under, the Internal Revenue laws, of a false or fraudulent return * * * shall * * * be guilty of a felony * * *."

As this statute is an enactment of later date and of more specific application than Sec. 550 with respect to the acts of these defendants, under familiar law, it supersedes them and is exclusively applicable. *Yuganovich v. United States*, 256 U. S. 450; *Lewis v. United States*, 280 Fed. 5, 6 (6th C. C.); *Wood v. United States*, 16 Pet. 342, 363.

The substitution of Sec. 3793 for Sec. 550 in charging the aiding in the preparation and presentation of false income tax returns has been recognized by use in the Second Circuit, *United States v. Kelley*, 105 Fed. (2d) 913.

The purpose of this sub-division of Sec. 3793 was stated in Senate Report No. 8226, page 45, regarding the Internal Revenue Act of 1924 in Sec. 1117(d), as follows:

"This sub-division, which was not contained in the House bill, provides a penalty for the offense of aiding in the preparation, presentation, procurement, counseling or advising of a false or fraudulent return, affidavit, claim or document authorized or required by the Internal Revenue laws. It is designed to discourage specifically the presentation of false returns and claims to the Department."

The existence of this sub-division of Sec. 3793 makes even more evident the duplicity in the charges against these respondents in the present indictment. Manifestly, the charge of concealment after March 15th in each year is that of a different offense than the one described in Sec. 3793.

This defect in the indictment was gravely prejudicial to these respondents. Under charge of assisting in preparation and presentation of a false return, the prosecution could not have included allegations that these respondents concealed the crime and or the criminal for a period of years after the presentation of the return on March 15th.

III.

- (A) **There Was No Evidence of Any Intent or Act of Respondents to Aid Johnson's Alleged Attempts to Evade Taxes.**
- (B) **There Was No Evidence of Conspiracy to Defraud the United States of Johnson's Income Taxes.**

(A) *Lack of Evidence as to Substantive Counts.*

As to these respondents, there was a fatal absence of any evidence that they had any connection whatever with Johnson's income taxes or returns or knew anything about any of these matters or had any intention to aid or assist Johnson in his alleged attempts to evade his taxes. The gist of the unlawful attempts charged against Johnson was that he filed false income tax returns understating his income each year for four years. Of course, the case of the prosecution against these respondents failed without proof that respondents committed acts which had a direct, rather than a coincidental connection with the alleged attempts.

The government brief evades the issue by arguing that in other indictments in other cases the attempts to evade taxes were charged to have been made by means other than by filing false returns. Needless to say, the prosecution is bound by the charges which it makes in this indictment and by which the defendants presumably are informed as to the nature of the accusation against them. We emphatically take issue with the statement of the government brief that the Court of Appeals misunderstood the charges in the first four counts. A glance at the majority opinion clearly disproves such contention.

The case of *Coffin v. United States*, 162 U. S. 664, 679, 40 L. Ed. 1109, 1115, clearly indicates the necessity for

direct connection of the alleged aiding with the principal's crime. There the principal defendant, one Haughey, was charged with making a false entry in the books of a bank with intent to defraud, and the other defendants were charged with aiding and abetting. The trial court instructed the jury that the aiders and abettors could not be found guilty unless the jury was satisfied that they did or said something to show their consent to and participation in "the unlawful and criminal acts of Haughey and contributing to their execution." It was objected that the expression "unlawful and criminal acts" might have been understood by the jury as relating to the unlawful and criminal acts of Haughey generally. This court gave careful consideration to the point, indicating that the instruction if so understood would have been erroneous, but said after reviewing other portions of the instructions that the expression "unlawful and criminal acts" could only have been understood by the jury as having reference to the acts of Haughey attendant upon and connected with the making of the entry.

In *Kelley v. United States*, 105 Fed. (2d) 913 (2d Cir.), three defendants were convicted under section 3793(C) (b)(1) for assisting in the preparation and presentation of fraudulent income tax returns. The Court of Appeals in its opinion indicated it attached much importance to the evidence showing connection of defendants with the returns, by discussing such evidence in considerable detail.

It should be remembered that in the instant case the only offense which the government claims is stated in the indictment is that of an attempt to evade taxes by the filing of a false return in each of the first four counts. Although aiding in the preparation of a false return might be an offense under section 3793 (C) (b) (1), it is not an attempt to evade taxes under section 145 (b) (1) on which the present indictment is based.

In the case of *United States v. Rachmil*, 270 Fed. 869, 871, Judge Knox (D. C. N. Y.) said at page 871 that the preparation of a false return, the signing of it by the taxpayer, and the acknowledgment of signature by the notary public did not constitute an attempt to defeat and evade taxes but that the filing of the false return did constitute such an attempt. He said at page 871, "When, however, a step which has for its purpose nothing less than an attempt to defeat the income tax laws has taken place, namely, the filing of the return with the Collector of Internal Revenue, the act denounced by the income tax laws is complete. I say this because the return is then placed beyond the control of the defendant and the Collector in usual course will use such return as a basis of assessing the tax. The attempt of the defendant, if the return be false and fraudulent, is complete." This decision was cited with approval by this Court in *United States v. Novick*, 273 U. S. 202, 206, 70 L. Ed. 610, 612.

In the case of *Seiden v. United States*, 16 Fed. (2d) 197 (2d Cir.), it was held that the manufacture of liquor illegally is not an attempt to remove it without payment of tax. There the defendant was more closely connected with the crime than the alleged aiders in the case at bar. Manifestly, the manufacturer of the liquor makes it possible to remove the liquor. Nevertheless, unless he is actually connected with the removal, his previous illegal acts do not render him guilty of the later crime.

In *Hills v. United States*, 97 Fed. (2d) 710, 712 (9th Cir.), it was said that the purpose of the accessory to aid the principal does not make him guilty unless that purpose of the accessory resulted in an act of the accessory which actually aided the principal in the commission of the crime charged. In the present case there was neither such purpose nor such aid.

Numerous cases are found in which the participation of

charged aiders was held to be insufficient to fasten criminal responsibility upon them. In all these instances the connection was much more direct than in the case at bar. Thus, in *Yenkitchi Ito v. United States*, 64 Fed. (2d) 73, 75 (9th Cir.), alleged accessories were charged with aiding and abetting the principal offenders in bringing aliens with intent to land them illegally from Mexico, to a point 40 miles from the mainland of the United States, where officers prevented further progress in crime. It was held that this did not constitute either an attempt to land the aliens or aiding and abetting therein.

In *Pontiff v. United States*, 9 Fed. (2d) 29, the defendant, with his automobile, went to a place where he expected others to land liquor illegally, remained there for some time, and then left, abandoning his car, when he learned that officers were present. A few hours later liquor was illegally landed at the place and seized by the officers. However, it was held that the proof was not sufficient to show an aiding and abetting of the offense of illegally transporting the liquor.

Another vital element closely related to that just discussed is the element of intent on the part of respondents that Johnson should evade his income taxes and that they should assist him in so doing. Evidence of this intent is entirely lacking in the record. It hardly needs citation of authority to establish the fact that proof of such intent is necessary here.

Where a statute denounces as criminal only the willful doing of an act, a specific wrongful intent is of the essence, that is, actual knowledge of the existence of an obligation and a wrongful intent to evade it. *Potter v. United States*, 155 U. S. 438, 39 L. Ed. 214; *Spurr v. United States*, 174 U. S. 728, 43 L. Ed. 1150; *Mardock v. United States*, 290 U. S. 389, 78 L. Ed. 381.

Willful intent is one of the essential elements in proof

of evasion of income taxes. *Malone v. United States*, 94 Fed. (2d) 281 (7th Cir.), *Hargrove v. United States*, 67 Fed. (2d) 820 (5th Cir.).

Where an act must be knowingly and willfully done to be criminal, not only a knowledge of the act is implied but a determination with a bad intent to do it. *Bentall v. United States*, 262 Fed. 744, 746; *Filton v. United States*, 96 U. S. 699, 702, 24 L. Ed. 875; *Hicks v. United States*, 150 U. S. 442, 449.

None of the elements of willfulness, intent to evade Johnson's taxes, or even knowledge of Johnson's income tax returns, on the part of these respondents is shown by the evidence here.

In the case of *Hicks v. United States*, 150 U. S. 442, the defendant was convicted as an aider and abettor in a murder. The proof showed that immediately before the actual killing the actual murderer threatened the victim with a gun but Hicks, a companion of the murderer, stood by and directed abusive and threatening remarks to the victim. The trial court instructed the jury that to render Hicks guilty the jury must find that his comments encouraged and inspired the murderer. This court held that this was insufficient in that it failed to advise the jury that the words must have been used by the aider with the intention of encouraging and abetting the murderer.

In the present case there is no evidence that Johnson and any of these respondents ever talked together about his income, his income taxes or tax returns. There is not a proven circumstance which even tends to bring home to these respondents knowledge of Johnson's income or reports. All of the direct testimony is that they had no knowledge.

Therefore, even if Johnson were guilty of a criminal attempt to evade his income taxes and the acts of these defendants in fact aided him in that attempt, there is no

proof here that the accessories had knowledge of or participated in Johnson's alleged illegal intention. In other words, if there was aid and assistance by the alleged aiders to Johnson's alleged unlawful attempts, such aid and assistance, was merely coincidental and not intentional or willful.

In *Firpo v. United States*, 261 Fed. 851, it was held that one does not assist a deserter from the Army in his desertion by merely advising him to stay away from the authorities.

The recent and authoritative case of *Falcone v. United States*, 311 U. S. 205, 61 S. C. 204, is instructive here. There this court indicated that the acts of one of the defendants in concealing his identity in purchasing yeast would not be considered as showing guilty knowledge to distill liquor illegally but would rather be attributed to a mistaken belief by the defendant that it was a crime to sell yeast to distillers.

The Court of Appeals was clearly right in holding that a verdict of not guilty should have been directed as to the alleged aiders and abettors under the first four counts.

(B) *Lack of Evidence to Show Conspiracy Participated in by These Respondents.*

The Court of Appeals erroneously decided that the evidence in support of the fifth or conspiracy count was sufficient to go to the jury. A similar failure of proof to that already demonstrated with respect to the first four counts obtains regarding the fifth count. There was no evidence of any meeting of the minds of any of these respondents with Johnson for the purpose of enabling him to defraud the Government in connection with his income taxes. The Court of Appeals evidently was confused by the evidence of friendly and harmonious acquaintanceship between the respondents and Johnson and each other while

visiting the houses conducted by these respondents. There is no evidence, however, even suggesting that such casual and occasional co-operation was directed toward the end of evading Johnson's income taxes. It should be noted in this connection that the accountants, Radomski and Brantman, who did the actual work of preparing the income tax returns for Johnson were used as witnesses by the prosecution (2 R. 93, 419) but there was no testimony from these accountants or any other witnesses that these respondents had anything to do with the making of Johnson's income tax returns or knew anything about the contents, much less the accuracy or inaccuracy thereof.

In the *Falcone* case, *supra*, 311 U. S. 205, 61 S. C. 204, it was held that knowledge by merchants selling supplies to illicit distillers that such supplies would be used in illicit distilling was not proof of conspiracy between such merchants and such distillers. This court ruled that there must be actual meeting of the minds of defendants in the conspiracy charged and actual participation by the defendants in the conspiracy charged. So in the present case, no conspiracy is shown and no participation by these defendants. Even if respondents had knowledge that Johnson was receiving some income from the gambling houses, as contended by the government, there is not a scintilla of evidence that they knew as to whether or not he was reporting this in his income tax returns. Needless to say, a scintilla of evidence would not support a tax assessment in a civil case. *Rhodes v. Commissioner*, 100 F. (2d) 966, 969 (6th Cir.).

Another authoritative decision is found in the case of *Peoni v. United States*, 100 Fed. (2d) 401 (2nd Cir.). There, Peoni sold counterfeit money to a second person, who in turn sold it to a third person. It was held by the Court of Appeals that Peoni was neither an accessory to unlawful possession of the third person nor was he in conspiracy with him, although the Court called attention to

the fact that undoubtedly Peoni knew that the counterfeit money would be possessed by some third person and was indifferent thereto.

In short, we respectfully submit there was an entire failure of proof to show any illegal intent, plan or combination involving these defendants in any way with the matter of Johnson's income taxes, income tax returns or income tax payments.

The Government's brief states that the evidence against these respondents is summarized in the Statement, pages 4-10 of the brief. The entire Statement is devoted to a recital of circumstantial evidence which the Government contends showed "ownership" (whether total or partial not stated) of the gambling houses by Johnson. The Court of Appeals summarized and analyzed this evidence as showing at best an indefinite interest (1 R. 195):

"We have carefully examined the testimony on this theory of the Government's case, and we are of the opinion that, considering it in the light most favorable to the Government, as we must do, the most that can be said is that the proof discloses Johnson had an interest in the gambling houses. The evidence does not show that he was the sole owner and therefore entitled to all the proceeds. The Government's contention on this theory of the case must rest upon the assumption that he owned the entire interest in the houses, that the total of all the business transactions at the currency exchanges and banks represented income from such houses, and that such income was paid to Johnson. It is not claimed that there is any proof that Johnson actually received this income. Such fact, if it be a fact, must be inferred from the other assumptions which we have mentioned. As already stated, Johnson reported a large income from his gambling transactions for each of the years in question, and to say that his interest in the gambling houses was such as to entitle him to an income greater than that reported is to indulge in rank speculation. If Johnson had reported no income for those years, a different sit-

uation would have been presented. We have no hesitancy in holding that the verdict cannot be supported upon this theory."

The Government's brief seems to evade this most important issue. Nowhere does the brief expressly say that the evidence shows Johnson to be the *sole* owner of the gambling houses nor that as such he was entitled to and presumably received *all* the income from approximately eight gambling houses conducted by the respondents Sommers, Flanagan, Kelly and Hartigan respectively.

Government counsel list in their brief the many gambling houses that were operated by Creighton, as well as those operated by Wait, Mackay and others, but they omit to exclude the aggregate of the financial transactions of these houses when they state Johnson's alleged income from them, notwithstanding the acquittal of Creighton, Wait and Mackay.

Assuming, arguendo, that the circumstantial evidence of the Government indicated an indefinite proprietary interest of Johnson in some of these gambling houses, there is a total failure of proof of the extent of that interest and of the knowledge of the several respondents of Johnson's interest, if any, in the houses of the others respectively.

How trifling the circumstances were on which the Government relies will appear from a brief analysis:

Johnson was shown to be instrumental in securing employment for approximately nine or ten persons in these gambling houses during a period of more than four or five years (2 R. 222, 225, 276, 309, 312, 315, 322, 328, 387, 396). During this same period the houses in question undoubtedly employed hundreds, possibly thousands, of persons.

In each instance, where gambling houses were located in buildings owned by Johnson, rent was paid by the tenant to Johnson or his real estate agent or representative (2 R. 14, 2 R. 950) and this rent was always returned as income by Johnson.

Two carpenters, Anderson and Schultz, who worked at the gambling houses also did some work on Johnson's farm (2 R. 128, 132--2 R. 135, 240). The respective proprietors paid for the work at their gambling houses and Johnson paid for the work at his farm.

Johnson installed air conditioning in the D & D Building where several tenants, in addition to Kelly, had been unsuccessful in other lines of business (2 R. 17-18, 27-28). Kelly was treated exactly the same as other tenants in respect to rent adjustments. If Kelly was an employee, and not a tenant, Johnson could have concealed the relationship better by waiving no rent as to Kelly.

In 1935, Johnson talked to some one about the rate or price for nation-wide news service. Flanagan made the appointment for himself over the telephone but when the witness arrived at the appointed place Johnson was there (2 R. 153). In 1938 the same witness had a conference regarding these rates with one Ragen and Flanagan (2 R. 153). Flanagan was a regular patron of Nationwide but Johnson never had an account with it.

An accountant testified that Johnson directed him to install an accounting system in the Lincoln Tavern dining room and bar (2 R. 305) but not in the gambling establishment there. Wait testified that he was the proprietor and ordered the service. Hartigan ran a gambling room in the same building.

Johnson once offered to refund the bet of a witness who had lost \$10.00 or \$15.00 at dice when the latter complained (2 R. 379-380).

A woman gambler testified that Sommers reduced the gambling limit on Red and Black and when she complained Sommers told her to see Johnson. She testified she went to Bon Air to complain to Johnson and that he told her he would have the limit restored. However, Sommers did not restore the limit (2 R. 572).

When Hartigan rented the Harlem Stables, he was not present, being ill, when the claims of some former occupants were settled for furniture and property which they claimed to have left in the place previously (2 R. 283, 290, 3 R. 804-807). They testified they were paid \$200.00. Even if this came from Johnson, which seems uncertain from their testimony (2 R. 286), and which was denied by several witnesses present, it is a trivial incident in no wise tending to prove ownership of the gambling house.

The preceding short paragraphs, we believe, are fair samples of the evidence on which the Government relies to show that Johnson was the *sole* owner of the gambling houses operated by these respondents and on which it bases the presumption that he received therefrom during the period of four years an enormous amount of money.

The stress laid on "concerted operation" of the gambling houses, is without force as regards ownership. Concerted operation indicates friendly relationship of respondents and business-like and economical operation of the gambling clubs by these respondents. This evidence in no wise points to ownership by Johnson.

In holding that there was a jury question as to the fifth count, the Court of Appeals failed to apply to this count its previous proper and accurate finding that the evidence, at its strongest, left a hiatus between proof of possibly some indefinite proprietary interest of Johnson in the gambling houses and the total ownership necessary to sustain the Government's theory, leaving without support the presumption that Johnson received a tremendous sum of money, presumed to be income, from the houses. Incidentally, of course, this triple presumption that Johnson was the sole owner, that as such sole owner he received enormous sums of money and that such money was taxable income, is rebutted not only by the testimony of Johnson (3 R. 950, 951), Sommers (3 R. 810), Flanagan (3 R. 931, 932)

and Kelly (3 R. 879) at the trial (as well as Creighton (3 R. 858) and Wait (3 R. 896) who were acquitted) and by the statement of Hartigan (2 R. 466) but by the income tax returns of all these respondents, except Brown who did not operate a gambling house. There is a total failure of proof that Johnson ever received a dollar from any of these respondents.

The conspiracy charged in the indictment to defraud the United States of the income taxes upon Johnson's income could only have been established by evidence that Johnson's income from the gambling houses would be and was greater than that reported in his returns and, therefore, that a greater tax than that paid would be due, that these respondents knew that such excess of income would and did exist and that, with knowledge of that fact, they agreed with Johnson and each other that Johnson should make returns understating his income and should omit and fail to pay the full amount of tax due.

As pointed out by the Court of Appeals (1 R. 195), there was no proof that Johnson's income actually exceeded the large amount reported in his returns nor that his tax was actually larger than that which he paid each year. This is conclusive of the conspiracy count. It is a mere appendage of the four counts charging attempted evasions. There may be a conspiracy to commit an offense which is never committed; but that is not this case. If the Government has failed to prove under its gambling house ownership theory that Johnson had a larger income than he reported, it has likewise failed to prove the conspiracy charged. The Court of Appeals was right in holding that the claim that Johnson received from the gambling houses of these respondents more income than he returned was pure conjecture. The same must be said of the charge of conspiracy.

The mere choice of probabilities does not constitute evidence and should not be submitted to the jury; nor does

the placing of inference on inference or presumption on presumption constitute a sufficient basis for a determination of facts. *Pennsylvania R. R. Co. v. Chamberlain*, 288 U. S. 333, 77 L. Ed. 819; *U. S. v. Ross*, 92 U. S. 281, 283, 23 L. Ed. 707; *Alexander v. Standard Acc. Ins. Co.*, 122 F. (2d) 995, 997 (8th Cir.); *Parker v. Gulf Ref. Co.*, 80 F. (2d) 795 (6th Cir.).

In this connection, if Johnson's expenditures exceeded his reported income, as assumed by the Government, this would be immaterial so far as the aiders are concerned for several reasons. First, they had no knowledge of his total actual income or of his total actual expenditures. Second, at least so far as the aiders are concerned, it must be presumed that the expenditures of Johnson, if made in the amounts contended by the Government, were made from income received by Johnson in 1935 or previous years, or from other resources.

The entire computation by the Government is built basically upon Johnson's alleged statement in the nature of an admission to revenue agents in January, 1934 to the effect that as of December 31, 1931, Johnson had \$78,000 in money. Needless to say, this oral statement should not have been received or considered against the aiders. If it were an admission of Johnson as claimed by the Government, it was of course binding only on himself and not at all upon the aiders.

Similarly, the income tax returns of Johnson are clearly not proof against the aiders. A return is a statement by the maker which possibly may be considered as an admission against him but is of course hearsay as to third parties. *Greenbaum v. United States*, 80 Fed. (2d) 113-115 (9th Cir.).

Logically analyzed, the government's position is that Johnson's income tax returns are presumed to be truthful and accurate for the years 1932, 1933, 1934 and 1935, when

the returned income was relatively small, and are presumed to be false and inaccurate for the years 1936, 1937, 1938 and 1939, when the income returned reaches a quarter million dollars a year. Whatever force this contention might have as against Johnson, (and we cannot see how it has any,) it is utterly fallacious as applied against these respondents.

On the contrary, the aiders are entitled to exactly the opposite presumption than that contended for by the government, viz., the presumption of innocence would require the presumption, so far as respondents are concerned, that Johnson had other resources than his current income to meet the large sums which the government claims he expended in 1936, 1937, 1938 and 1939.

We submit, therefore, that the evidence was clearly insufficient to support the fifth or conspiracy count and that both the Court of Appeals and the District Court were in error in holding to the contrary.

IV.

The Court of Appeals Did Not Weight the Evidence Nor Decide the Credibility of Witnesses.

We respectfully take issue with the contention of the government that the Court of Appeals substituted its views for those of the jury as to the weight of the evidence and the credibility of witnesses in ruling on the substantive counts.

In not a single instance has the lower court invaded the province of the jury. In every instance where that court held the evidence insufficient, it has pointed to an absolute lack of evidence. Nowhere in the majority opinion has the government pointed out a statement that a witness was not credible or that the evidence was not of sufficient weight.

The government brief bases its contention on this point

upon the holding by the Court of Appeals that the evidence of the government did not show entire ownership of the gambling houses by Johnson and, therefore, did not support the inference that the entire gambling house income went to Johnson.

The government brief seems to avoid saying that the proof showed sole or entire ownership of the gambling houses by Johnson or that Johnson received all of or the entire alleged income therefrom, although this is the only logical basis for the theory of the prosecution, as shown by the Court of Appeals opinion.

The cases cited by the government on this point are not applicable. In *Wexler v. U. S.*, 79 Fed. (2d) 526 (2d Cir.) the defendant reported only a "trifling income." The income charged against him was over \$2,000,000 per year deposited in accounts under fictitious names, in which accounts the defendant mingled his own funds. The monies in these accounts were used, in some instances at least, for his personal benefit, such as by the purchase of an automobile for himself and the payment of money to a corporation whose debts he had guaranteed. His expenditures also exceeded his reported income.

In *Gleckman v. United States*, 80 Fed. (2d) 394, the defendant reported gross income for 1929 of \$11,167. The evidence of the prosecution showed bank deposits to his credit exceeding \$150,000 in that year. Written property statements made by him to banks indicated that his net worth increased from \$64,000 in October, 1929, to \$217,000 in March, 1930.

Thus, in both the Wexler and Gleckman cases there was definite, positive proof of the receipt of large sums of money exceeding greatly the amounts reported in returns. Wexler was the owner of a brewery and Gleckman was engaged in several different kinds of business. The inference, therefore, was that such deposits as were made in

the bank accounts of the taxpayers would be presumed to be income (in the absence of contrary proof) because of the fact that the deposits were from proceeds of the businesses owned by the taxpayers. There was no attempt by the court to presume from the fact that these taxpayers were engaged in business how much they received from the respective businesses. In other words, the presumption did not go to prove the existence of a definite amount of income from an indefinite participation in business. The excess of wealth in possession in each case was clearly proved to be much greater than that reported in the returns as income. The reference to business in the opinions was merely to support the presumption that the wealth was received during the current year, that is, that it was income. Whatever application, if any, this doctrine might have in support of the expenditure proof as against Johnson, it certainly has none as against these aiders on the gambling house ownership theory.

Assuming, as the Court of Appeals has done, that all the evidence of the government was true, and making all reasonable inferences and presumptions based thereon, the record still leaves unanswered and subject to speculation two questions, the answers to which were vital to the success of the prosecution and without which answers the prosecution necessarily fails. These questions are: First, what was the extent of Johnson's interest in the gambling houses? Second, what was the amount of income, if any, he received from the gambling houses?

If the government means to suggest that the lower court weighed the evidence or decided credibility of witnesses, in holding that there was no connection shown of these respondents with Johnson's income tax returns, such suggested contention is without basis. As we have demonstrated elsewhere, there was no evidence of any connection of these respondents with Johnson's income tax matters or returns or taxes. As heretofore noted, the government's

brief fails to point out any such connection of these respondents with Johnson's income tax matters or any knowledge on their part of the alleged fact that Johnson was not reporting his full income and paying his full tax.

V.

The Verdict Against These Respondents Was Invalidated by Improper Extra-Judicial Statements and Innuendoes of the Prosecutors Which They Placed Before the Trial Jury.

This claim of error was not discussed by the Court of Appeals. However, as we understand this court has taken the entire case and may, if it sees fit, decide the case upon the merits, without confining itself to the limits of the opinion of the Court of Appeals, we respectfully submit that in justice to these respondents attention should be called to what we consider the grievous errors herein discussed in this section. These errors consisted of the introduction in evidence of so-called statements made by respondents upon examination of them respectively by Internal Revenue agents and by the prosecuting attorneys.

The law is well settled that statements incriminating an accused person, made in his presence, but which are denied by him, are inadmissible against him. *People v. Pfanschmidt*, 262 Ill. 411, 104 N. E. 804, 819; *People v. Harrison*, 261 Ill. 517, 104 N. E. 259, 261; *Com. v. Trefethen*, 157 Mass. 180, 31 N. E. 961; Underhill on Criminal Evidence (2nd Ed.) Sec. 122.

In the case at bar the so-called statements of respondents Sommers, Hartigan, Kelly and Brown (3 R. 467, 462, 458, 614) were introduced in evidence. These statements consisted of denials by the respective defendants of any interest or ownership of Johnson in their respective businesses. Inferentially, the suggestion was conveyed to

the jury by these statements of an interest or ownership of Johnson in those businesses. Thus, the statements of these defendants emphasized the theory of the Government and, in addition, laid stress upon the fact that these respondents were gamblers, upon the details of the conduct of their gambling establishments, etc. (3 R. 467, 462).

The so-called grand jury examination of Brown furnishes a most flagrant instance of the violation of the rights, not only of Brown, but of the other respondents as well. Although the trial court ruled that this examination was only admissible against Brown, its nature and undoubted effect were such that it must have been extremely prejudicial to all other respondents. The so-called testimony of Brown before the grand jury (3 R. 614) was in the nature of a scathing and threatening cross-examination and criticism of Brown by three prosecuting attorneys, combined with critical comments affecting the other respondents and intimations of misconduct on their part. It cannot be doubted that if Brown had been a witness on the stand the trial court would have refused to permit him to be cross-examined in the fashion shown by the transcript which was read to the trial jury. Nevertheless, the trial court apparently overlooked the extremely improper and prejudicial nature of the questions, remarks, threats and suggestions by the prosecuting attorneys, thus presented to the trial jury.

We respectfully submit that the so-called examination of Brown was very similar to that denounced in *Berger v. U. S.*, 295 U. S. 78, 87-89. See also, *Little v. U. S.*, 93 Fed. (2d) 401 (8th Cir.) and cases cited therein.

Only about one-third of the grand jury interrogation of Brown was admitted in evidence at the trial. This approximate one-third covers about seventy-eight pages of the printed record (3 R. 614-692).

In the taking of this so-called statement from Brown

and its subsequent introduction in evidence at the trial, there was laid before the trial jury the fact that Hartigan, Sommers, Flanagan and Kelly were engaged in the gambling business (3 R. 622) according to Brown's understanding, who had never been in any of their gambling houses (3 R. 659); that Bill Johnson, about twelve years before, was interested in a dog track, according to Brown's understanding (3 R. 637-638); the intimation by the prosecutor that after Mr. Skidmore was indicted, Brown and Hartigan decided to close up the currency exchange (3 R. 625); the intimation by the prosecutor that the indictment of Skidmore was spread forth in the newspapers and that, therefore, Brown knew Skidmore had been indicted about the last of August or the first of September (3 R. 625); the intimation that the records of the currency exchange were criminal evidence similar to the gun with which a man is killed (3 R. 628); the intimation that Brown should have saved the records of the currency exchange as of value to the United States Government (3 R. 628); the intimation that Brown was not telling the truth when he stated that nobody ever cautioned him to keep the records of the currency exchange (3 R. 630); the intimation that Brown would be subject to prosecution for failing to testify truthfully before the grand jury (3 R. 639); the denial by the prosecutor of Brown's testimony that he was summoned before the grand jury (3 R. 650); the intimation by the prosecutor that someone "behind the scene" had been telling Brown what to do during the last two or three months (3 R. 636); the application by the prosecutor to Brown of the sarcastic reference, "Mr. ex-cashier of the Ogden National Bank" (3 R. 645); the intimation by the prosecutor that N. S. F. checks were checks "of suckers who had lost those checks in gambling houses" (3 R. 647); the threat by the prosecutor to take Brown before the Judge on a contempt citation (3 R. 647); the statement by the prosecutor that at a later time he would confront

Brown with letters from the Central National Bank showing the amount of money which the bank was sending to the currency exchange (3 R. 650); the suggestion by the prosecutor that 60% of the business of the currency exchange came from "outlaw business—or these gamblers" (3 R. 652); intimation by the prosecutor that someone assorted the records of the currency exchange and told Brown what to burn and what to keep (3 R. 658); the suggestion that Brown burned all the evidence relating to the business of the gamblers with the sole exception of the money orders or records (3 R. 658); repetition by the prosecutor of the suggestion that Brown knew before the records were burned that Skidmore had been indicted (3 R. 658); the statement by the prosecutor that O. L. Alexander, Mr. Skidmore's brother-in-law, was connected with the Horseshoe gambling house and the Dev-Lin for years (3 R. 658); a third suggestion by prosecutors that Brown knew from the newspapers that the gamblers were under investigation (3 R. 659); the suggestion that Brown was "kicked out of a bank" (3 R. 646); the suggestion that Brown diverted the currency exchange business of the gamblers from Mr. Marcus and that Marcus became disgruntled (3 R. 663).

The rule is of course fundamental that a defendant on trial may not be subjected to the unsworn statements of anyone, much less the attorneys conducting the prosecution, even were such statements relevant to the case. By the procedure here adopted Brown and all of the other respondents were deprived of the opportunity of cross-examination of the attorneys who virtually constituted themselves witnesses against the respondents. The latter were not confronted by such attorneys as witnesses nor were they entitled to give testimony in rebuttal of the many prejudicial inferences, suggestions and statements made by the attorneys. This was reversible error. *Berger*

v. *U. S.*, 295 *U. S.* 78, 87-89; *Lowdon v. U. S.*, 149 *Fed.* 673, 677; *Taliaferro v. U. S.*, 47 *Fed.* (2d) 699, 702.

In addition, a very injurious statement was made by one of the prosecuting attorneys in connection with an alleged statement taken from Johnson which was introduced before the trial jury (3 *R.* 410).

At 3 *R.* 418 the attorney concluded the so-called Johnson statement with the following extremely prejudicial combination of statements of hearsay information, veiled threats for perjury, and statements that the attorney's information about these places was not "newspaper stuff," etc., viz.:

"Now, our information again is that you are an interested party in a number of gambling houses around here, and I'm inclined to think that our information will be found to be accurate, so that being the case, your story here this afternoon is not in accordance with our information. Now, I want you to think that over seriously between now and the next time you come down. You'll have a return engagement here, and at that time I think I shall confront you with places. And there's also a penalty for perjury here on these questions and answers. I'm going to caution you about that. The next time you come down here, if you want to stand on your statement given today, it's all right. I'm not threatening you. I want to square up the situation one way or the other, that you do or do not own these places. And that isn't newspaper stuff, either. Do you want to make any corrections or additions to any of your answers?"

Certainly the prosecution cannot contend that these statements of the prosecutor should have been submitted to the trial jury at all, much less without specific cautionary instructions protecting these respondents, regardless of the extremely doubtful question of whether or not they were admissible against Johnson. These statements were, of course, extra judicial and made by the prosecuting attorney in advance of trial and by their repetition before

the jury, the prosecuting attorney was successful in stating his alleged hearsay information to the jury of matters about which he would have been unable to testify even if he had been called as a witness. The statements and charges of the ownership of gambling houses made ostensibly against Johnson were equally prejudicial and injurious to appellants. Thus, in effect, these charges were made against these appellants outside their presence before trial and such charges were allowed to go to the jury without protection to these respondents in the instructions of the court. Requested instruction No. 55 on this matter was refused (3 R. 1030).

These unsworn declarations by the prosecuting attorney pertained to the very vital question in the case, viz., alleged ownership by Johnson of an interest in the gambling houses. In all probability these declarations were understood by the jury as evidence of the facts stated by the attorney.

A brief instruction was given as to the Brown statement (3 R. 1007).¹ However, the error was so grievous and the prejudice so great as to all respondents, including Brown, that we submit its effect could not have been cured by this charge. Cf. *Throckmorton v. Holt*, 180 U. S. 532, 567, 45 L. Ed. 663, 671; *Washington Gaslight Co. v. Lansden*, 172 U. S. 534, 554, 45 L. Ed. 663, 671; *Turner v. American Security & Trust Co.*, 213 U. S. 257, 266, 53 L. Ed. 788, 792. Even a single mistake may be so destructive of the rights of a defendant that a reversal must follow. *Appolito v. U. S.*, 108 Fed. (2d) 668; *Pharr v. U. S.*, 48 Fed. (2d) 767.

Here the violation was not a single one but was repeated many times.

Substantial error will invalidate the verdict, particularly in a case such as this where the evidence of guilt, if any, is meager. *Glassen v. U. S.*, 62 S. C. 457, 463 (Jan.

1. Requested Instruction No. 56 covering the matter somewhat more fully, was refused.

19, 1942). Where the evidence of guilt or innocence is sharply contradictory, it is particularly essential that there be freedom from error in the trial. *Ehrhardt v. U. S.*, 268 Fed. 326, 328 (7th Cir.); *Gold v. U. S.*, 26 F. (2d) 185, 186 (2d Cir.); *Perry v. U. S.*, 14 F. (2d) 88, 90 (9th Cir.).

VI.

The Introduction of the Testimony of Witness Clifford Constituted Reversible Error.

Inasmuch as the government has filed but one brief in this case and that of *United States v. Johnson*, No. 799, and as the argument on behalf of respondent Johnson, in case No. 799, and that on behalf of these respondents is substantially similar with respect to the error in the introduction of the testimony of witness Clifford and other prejudicial incompetent and immaterial evidence, in the interests of brevity, we respectfully ask leave to adopt the argument in the brief of Johnson on erroneous rulings on objections to evidence and request that the court consider it as if repeated herein.

Conclusion.

In conclusion, we respectfully submit that the grand jury was without jurisdiction to return the indictment herein; that the indictment as drawn was fatally defective; that the verdict was not supported by any substantial evidence, and that the convictions should be reversed.

Respectfully submitted,

JOHN ELLIOTT BYRNE,

EDWARD J. HESS,

*Attorneys for Jack Sommers, James
A. Hartigan, William P. Kelly and
Stuart Solomon Brown, Respond-
ents.*

APPENDIX.

Criminal Code:

SEC. 332. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal. (U. S. C., Title 18, Sec. 550.)

SEC. 333. Whoever, except as otherwise expressly provided by law, being an accessory after the fact to the commission of any offense defined in any law of the United States, shall be imprisoned not exceeding one-half the longest term of imprisonment, or fined not exceeding one-half the largest fine prescribed for the punishment of the principal, or both, if the principal is punishable by both fine and imprisonment; or if the principal is punishable by death, then an accessory shall be imprisoned not more than ten years (U. S. C., Title 18, Sec. 551).

Internal Revenue Code:

SEC. 3723. * * *

(b) *Fraudulent Returns, Affidavits, and Claims.*—

(1) *Assistance in Preparation or Presentation.*—

Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (U. S. C. Supp. V, Title 26, Sec. 3723.)

Judicial Code:

SEC. 284. * * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than three terms. * * * (U. S. C. Supp. V, Title 28, Sec. 421).

Revenue Act of 1936, c. 690, 49 Stat. 1648, 1703:

SEC. 145. PENALTIES.

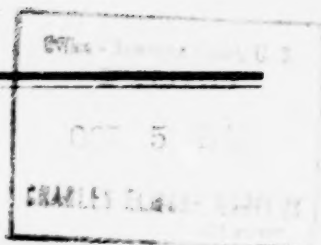
(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Revenue Act of 1938, c. 289, 52 Stat. 447, 513:

Section 145 (b) is identical with Section 145 (b) of the Revenue Act of 1936, *supra*.



FILE COPY



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1942

No. 5

THE UNITED STATES OF AMERICA,

Petitioner,

vs.

JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM
P. KELLY, STUART SOLOMON BROWN,

Respondents.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

**BRIEF FOR RESPONDENTS, JACK SOMMERS, ET AL.,
ON REARGUMENT.**

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ON REARGUMENT.**

While rhetoric will not exculpate the respondents from guilt, neither will the piling of an unsupported Pelion on a non-existent Ossa support a conviction of any or either of the respondents. We attribute to inadvertence rather than to misplaced zeal the many misstatements of fact affecting material propositions, found in the Government's brief on reargument. While the important misstatements will hereafter be challenged by the record from time to time, we are intrigued at the outset by the very first statement of purported fact urged by the Government in support of its answer to Question 1 propounded by the Court. On page 7 of the Government's brief is the same footnote:

tabulation as appeared in their original brief in this Court, setting out the names of twenty-one so-called clubs and casinos, and immediately thereafter the first sentence of page 8 of the brief recites that "Johnson denied that he owned or had any interest in *those houses*." (Emphasis ours.) From that sentence on, the terms "those houses" and "the houses" and "the gambling houses" are used in the brief to refer to the twenty-one names in the footnote on page 7. Even a cursory examination of the record discloses that there was no evidence even remotely connecting the co-respondents with thirteen of "those houses." We cannot here offer record citations of what the record does *not* say; we respectfully point out this initial inadvertence in the Government's brief, however, as characteristic of the Government's approach to the answer to the first question propounded by this Court.

We state that the record discloses not a single fact pertinent to the issues here nor affecting in anywise these several co-respondents insofar as the following gambling houses are concerned: The Casino Club, The Villa Moderne, The Southland Club, The Western Club, The Select Club, The Mayfair Club, The Northland Club, The Club Proviso, The 4011 Club, 2135 Lake Park Club, The Harlem Club, The 11901 Vincennes Club and The 406 Club.

I.

THERE WAS NO EVIDENCE WHICH WARRANTED THE SUBMISSION BY THE TRIAL COURT TO THE JURY OF THE CHARGES MADE AS TO ANY OF THE RESPONDENTS, SOMMERS, KELLY, HARTIGAN AND BROWN, IN ANY OF THE FOUR SUBSTANTIVE COUNTS OR IN THE CONSPIRACY COUNT.

A.

The evidence as to each of the respondents, Sommers, Kelly, Hartigan and Brown on the substantive counts.

- 1. There was no substantial evidence that the gambling houses were operated as a unit.**

Indiscriminately characterizing each gambling establishment as a part of a supposititious unit of operation and referring to "the houses" as indicating *all* of the gambling houses, by whomsoever owned and operated, and mentioned in the record, the Government seeks to show this Court that there was what they term "a unit operation"; in other words, the theory appears to be that it would be more plausible that one man—Johnson, presumably—owned all of the gambling houses, by showing, or attempting to show, that all of the houses referred to were operated as a unit, than to show Johnson's ownership of gambling houses unconnected by some pattern.

A cogent reason for the Government not answering the Court's first question categorically is demonstrated by the method which they still persist in using to demonstrate their theory of "unitary operation." They search the record for a witness who has served two of the houses, misrepresent a telephone service as being a physical interconnection between five or six of the houses, locate a mover who served two of the houses, find "shills" who worked at

some of the houses, find a bookmaker supply house which delivered to none of the houses, and with other like bits conclude that all of the named gambling houses were one common enterprise. The obvious fallacy in this reasoning is that to make a unit of operation of five component parts, it requires that all five of the parts undertake the identical. For example, if Horse-Shoe and Dev-Lin employ the same "shill" in 1936 but Lincoln Tavern and Harlem Stables did not so employ that "shill" in that year, the unit of operation, if it can be thus dignified by that character of testimony, is a unit, but only as to Horse-Shoe and Dev-Lin. If any one of the component parts does not follow the pattern, the concept of unitary operation is thus destroyed as to it. In other words, when the Government seeks to show that the houses operated as a unit because they had common attributes, the attributes must necessarily be common to all. Furthermore, these common attributes must persevere in this instance year by year and co-respondent by co-respondent, if it is the contention of the Government that all of the houses were operated as a unit for the entire period in question.

This is what the Government's brief discloses as to "unitary operation":

The Government makes much of the fact that certain workmen at different times did construction and repair work at various gambling houses. So one Schmidt said he worked one evening in 1939 in putting in a new floor at the Harlem Stables, four days in 1939 at The Northland Club (connected with no one before this Court), and that he did some construction work in 1938 and 1939 at The Bon-Air (2 R. 336-337). Anderson, a plasterer, said he did some construction or repair work at The Northland Club in 1937, The Bon-Air in 1938, and the Lincoln Tavern in 1939. He also stated that he did some construction work at the Horse-Shoe, D. & D., Harlem Stables and 4020 Ogden Avenue, but did not state when he did such work

(2 R. 129-131). McGinnis, a construction laborer, said that in 1938 he did construction work at The Bon-Air and repair work at The Northland Club (2 R. 134-135). That Schultz worked at Dev-Lin and The House of Niles in 1935, is not relevant or compelling on the question of unitary operation or unitary ownership in 1939. Certainly, the fact that these men, engaged in construction work, did work at different houses, at different times does not prove unitary operation or ownership in one individual of *all* of the houses during the period here in question. However, even if it be assumed that the very same crew of men employed by the same construction contractor, did construction and repair work at all of the houses during all of the years in question—which clearly is not the evidence in this record—would this fact be any more proof that all of the houses during all of the time were owned by one individual and operated as a unit, than would the fact that certain house-owners in a given neighborhood employed the same carpenter or contractor over a period of time, prove that all of such homes were owned by one individual or operated as a unit?

The fact that most of the gambling houses used one service bureau for their race information is deemed proof by the Government that the houses were operated as a unit. First, it is to be emphasized that many gambling houses not in any way connected with the instant co-respondents were served with horse racing information by this same service bureau (3 R. 935).

The Government relies on the testimony of one witness who worked at the K. & K. Club (in no way connected with any of the instant respondents), in 1929 and 1930, who said he procured supplies and equipment for this club by ordering them over the purported telephone system, and the testimony of the owner of a bookmaker's supply house that he delivered such supplies to one John Morgan at the store and office building where the service bureau occupied the

second floor (3 R. 729-732) or one that was in the building next to it (3 R. 731). There was *no* evidence that these supplies were delivered to or purchased by the "service bureau," or that the "service bureau" in turn sold or delivered such supplies to any of the gambling houses. This same owner of the bookmaker's supply house testified that he sold gambling supplies and equipment to Flanagan, Sommers, Hartigan, Kelly, Creighton, Mackay and Meade (3 R. 732-733). He further testified that he sold Sommers "at his place of business called the Dev-Lin" and at the Horse-Shoe, and that he delivered the goods to Sommers personally, and that Sommers paid for them (3 R. 732). Likewise, he stated that he sold such merchandise to Creighton; he called at the various houses operated by Creighton, delivered the merchandise at such houses and was paid by Creighton (3 R. 732). Again in the case of Hartigan, he called on him at the Harlem Stables and Lincoln Tavern and delivered the goods at these places and was paid for them by Hartigan (3 R. 733).

We do not challenge the propriety of the Government's brief draughtsman in seeking to draw any reasonable inference whatsoever from any bit of testimony. We do, however, again protest the innuendo that a single supply house sold to a "clearing house" which in turn serviced these co-respondents—to build up the unitary operation notion—when the record is crystal clear that the several co-respondents purchased those supplies severally and directly for their own houses, from the supply house.

It is to be emphasized that the statement at page 15 of the Government's brief that "the gambling houses were interconnected by a private telephone system" is not supported by the record. The record indicates that each gambling house which subscribed for the horse racing news service was furnished with a one way broadcast line over which the racing news was broadcast from the service bureau to the room where the bets were placed, and with a two

way line from the service bureau to the house and over which there was two way communication between the bureau and the house (2 R. 214, 932). However, there is no evidence which even intimates that one house could communicate with another through the switchboard at the service bureau. There was a regular switchboard connection for each house with the telephone company (3 R. 697, 704). Upon analysis it is clear that the telephone communications between the gambling houses were no more "private" than that between any other two telephones in the Bell Telephone System.

Obviously, the fact that the gambling houses subscribed to the same service is no more proof that they were operated as a unit, or that they are all owned by one individual, than would the fact that separate and individually owned business enterprises subscribe to the same electric light, gas and telephone service furnished by the same companies be proof that these businesses were all operated as a unit or owned by one individual.

The Government seizes upon the fact that on occasion, usually when the respondents' own houses were closed, they were seen at other houses, to show unitary operation and ownership in one individual (Brief, pp. 18-22).

At page 19, the Government urges that one witness stated the conclusion that Sommers was night boss in 1937 and another stated that he was day boss in 1939 at the Horse-Shoe. Is this intended to disprove that Sommers was boss? Again the fact that one employee described Sommers as working as a cashier is argued. Indeed, a gambling house proprietor, described by another witness as doing a little of everything, might act as a cashier. A proprietor of any establishment might take particular delight in that function.

Because on some occasions (almost always when his own houses were closed and not in operation) Sommers

was at Harlem Stables and the Lincoln Tavern, from which a few persons concluded that he "seems to be some one of the bosses" (2 R. 346), that is taken as evidence that Sommers was not the owner of Horse-Shoe or of Dev-Lin, and that all of the houses were operated as a unit. Further, in the winter of 1936, and again in the summer of 1937, when the Horse-Shoe and Dev-Lin were closed and Hartigan was not using his facilities at the Lincoln Tavern, Sommers moved his equipment and crew to the Lincoln Tavern, and operated there, under arrangements made with Hartigan (3 R. 787, 812-813, 848). This fully explains the presence of Sommers and some of his employees at the Lincoln Tavern.

Reliance is next placed upon Adelaide Rebman, the woman "red and black" player. The Government's brief (pp. 19-20) states that she testified that she saw Sommers acting in a "supervisory capacity" at the Dev-Lin, the Lincoln Tavern, the Harlem Stables and the Horse-Shoe. (He acted in a supervisory capacity of course, in his own places.) But what witness Rebman did in part say was that over a period of four or five years she saw Sommers at the different houses and that "On the occasions I saw him at these different places he would go to the different tables and watch, and walk around and if anybody had anything to say they went up to him and talked to him. I have had occasion to hear other persons talk to the defendant Sommers lots of times. I do recall conversations I heard between Sommers and other persons. I cannot state the approximate time at which any of these conversations took place. My best recollection is that it was when I was playing but I couldn't say just when it was. I was playing there within the last five or six years" (3R. 567). So if this absolute zero in evidence of either unitary operation, or ownership, be accepted as a fact having probative value, does it even tend to prove or demonstrate that it attaches to any single year or any single count?

The same type of isolated and irrelevant incidents with respect to Hartigan are seized upon by the Government in an effort to give an appearance of substantial evidence to support the convictions of all of these co-respondents. Many of these incidents actually support the testimony of the latter.

It is urged that two witnesses testified that Hartigan was a night boss at the Lincoln Tavern in 1936 and the night boss at the Harlem Stables in 1938 (Brief, p. 30). Manifestly, as proprietor and owner of these two gambling houses, he was boss. Likewise, the testimony of the "red and black" woman player that she saw Hartigan (the time is not stated) at the Lincoln Tavern and Harlem Stables (his houses) and at the Horse-Shoe and Dev-Lin and that he walked around and acted "like a floor-walker" is urged as proof that Hartigan *did not* own the Lincoln Tavern and the Harlem Stables, and that all of the houses were operated as a unit.

The fact that Hartigan was stated to have been a "box man" at the 4020 Ogden Club in 1931 and 1932 and one of its managers during the period 1933-1935 is urged by the Government (Brief p. 21) as proof that Hartigan was not the owner of the Harlem Stables and Lincoln Tavern from 1936 to 1939, and that during 1936 through 1939 all of the houses were operated as a unit.

Likewise, alleged acts at the Horse-Shoe during 1934 and 1935, from which some witness concluded Hartigan was a boss, is deemed proof by the Government that he did not own the Lincoln Tavern and Harlem Stables during the period from 1936 to 1939.

The Government concedes that its case against Flanagan here is weak (Brief, pp. 21-22): but it hangs tenaciously to two very small crumbs, and on these it seeks to sustain criminal convictions against all of the respondents: The only evidence with respect to Flanagan here is the state-

ment of Cobb, the shill, that "I saw him (Flanagan) at Tessville (Dev-Lin) the first couple of times acting as a visitor and then taking part charge if some of the bosses were not there" (2R. 352), and the statement of one witness that Flanagan was sitting at the entrance of the Lincoln Tavern one evening and "shook hands with people that he knew evidently" (2R. 296). Flanagan was convicted by the jury. If he were alive, the Government would insist that the case against him was "compelling" and "clear." Creighton, owner of a string of gambling houses, Mackay of two others, Wait of another—were acquitted. They should have been.

Equally weak is the case against Kelly on this contention. Kelly rented the space for the D. & D. Club in September of 1936 and later that year opened the club (2R. 14). The fact that two witnesses stated they saw Kelly as a box man at the Lincoln Tavern, one of which did not state when (2R. 237) and the other perhaps sometime in 1936 (2R. 296), and the fact that one witness testified in 1940 that Kelly was box man at the Horse-Shoe "four or five years" ago, are deemed proof by the Government that Kelly did not own the D. & D. Club from its opening, late in 1936 until 1939, and that all of the houses were operated as a unit. One witness said that when he worked at Dev-Lin (the time was not fixed) "William or Pete Kelly had charge of the wheels" (2R. 333-334)—and he did not identify the defendant Kelly. Yet the Government relies on this testimony (Brief, p. 22).

The Government at page 22 of its brief states that five witnesses stated "or indicated" that Kelly was boss at the Harlem Stables. Of the five, Government witness Hayes stated that he worked at the Harlem Stables when the D. & D. had been closed, and that when the D. & D. was so closed he "considered" Bill Kelly *his* boss while at the Harlem Stables (2 R. 297). The D. & D. Club was closed from August 31, 1937, until February, 1938 and again from

August 31, 1938 until December 1, 1938 (Defendants' Exhibit K). This Government's witness certainly supports the simple fact that the co-respondents, on isolated occasions, over a long period of time, visited and assisted other gambling house owners whose houses were open. Again Government witness Harvan testified that in July, 1939, he saw Kelly as "a boss" at Harlem Stables. The record shows that the D. & D. Club (Kelly's) was closed from June, 1939 until October, 1939! (Defendants' Exhibit K).

Government witness Luria, upon whose testimony the Government relies to show that Kelly was a boss at several houses (Brief, p. 22) made clear whom a shill considers a "boss" and explains fully the "boss" testimony upon which the Government so heavily relies. Luria, a shill, said "Mr. Kelly was boss at Harlem Stables. There was lots of straw bosses around there. Everybody is a shill's boss. A shill takes orders from every one—anything that is needed, a shill, anyone tells him what to do and he does it. That is the way I characterize Mr. Kelly, as a boss out at the Harlem Stables—because he bosses me as a shill" (2 R. 325).

The fact that some regular gambling house employees, over a period of several years, were employed at different gambling houses is next seized upon as indicative of unitary operation and ownership in one individual. However, the Government recognizes that "a considerable portion of this shifting was attributed to the individual acts of the employees or to the fact that the houses were not operated all at the same time but at various times, and the employees would shift to the house or houses which were open" (Brief, p. 22). Certainly this movement of employees from houses where there was no work to houses where there was work does not prove ownership in one individual or unitary operation any more than the fact that workers (individually or en masse), are constantly shifting from those plants where there is no work to those

plants where there is work, proves that all such plants are owned by one person or operated as a unit.

Another hiatus between evidence and assumption is apparent in the Government's case against Sommers. In a period covering several years, the Government seeks to show that less than a half dozen employees were either sent or recommended for employment by Sommers (or *his employees*) to other gambling houses, some of which were in no way connected with any of the defendants (Brief, p. 23). Illustrative of the manner in which the Government interprets the record is revealed by the case of the "shill" at the Horse-Shoe who was "told", says the Government, to go to Harlem Stables (Brief, p. 23). What really happened is disclosed by the testimony of the "shill": "One of the boys, a runner on the floor said, 'You go to the Harlem Club. They want some men out there tomorrow'. He said, 'I got too many men here' * * *. They told me to go over there and look for a job" (2 R. 255-256).

Likewise as to Hartigan, all that the Government could find, in a period covering several years, was the fact that two persons were sent by Hartigan to obtain jobs. As to Flanagan, the Government is forced to go back to 1933 to find one instance where Flanagan sent a "shill" working at the 4020 Ogden Club to the Horse-Shoe (when it was operated by Barnes) for work (2 R. 295). Again, as to Kelly, all that the Government could muster was less than six instances of individuals either sent or recommended for jobs by Kelly during a period of several years (Brief, p. 24). It is evidence such as this which is urged by the Government to support its contention that the respondents did not own the houses which they swore they owned, and to support its contention of unitary operation and ownership of all houses by Johnson.

Rightfully relegated to the "miscellaneous" category are the so-called factors allegedly tending to show unitary ownership and operation, set forth at pages 24 to 30 of the Government's brief. The fact that Sommers, Kelly and Hartigan used the same mover on occasion is grasped by the Government. Yet the Government noted that the mover received separate orders for moving from each of these defendants, and that Sommers, Kelly and Hartigan each paid him separately for the separate services rendered to each of them (Brief, p. 25). Under the Government's theory, all householders using the same moving company during a period of years have a unitary operation and their furniture is thus owned by one individual.

Of the same calibre is the testimony showing that in different years at different times, different equipment was moved from some of the houses to others, including the House of Niles, which is in no way identified with the instant co-respondents (Brief, p. 25). The record establishes that Sommers operated the Lincoln Tavern for short periods in 1936 and 1937 with Hartigan's consent, when the Horse-Shoe and Dev-Lin were closed, and when Hartigan was not operating the Lincoln Tavern (3 R. 787, 812-813, 843). This accounts fully for the movement of equipment between the Horse-Shoe and the Dev-Lin and the Lincoln Tavern.

Hartigan operated both the Lincoln Tavern and the Harlem Stables. As the owner of both, there is no "unitary operation" inference whatsoever in the fact that equipment was shifted between these two houses owned by him. Yes—he may have operated his own houses as a unit. What did that have to do with Sommers, with Kelly, with Flanagan, or with Johnson? However, even if the record did not demonstrate these real reasons for the movement of equipment, certainly the fact that over a period of years the same or different gambling equipment was moved from one house to another is no

more compelling proof of unitary ownership or operation than the fact that soda fountain or other equipment moved in a period of several years between several restaurants proves unitary operation and ownership of those restaurants.

The fact that patrons were brought from some of the city houses to the Lincoln Tavern during a part of 1936, and to the Harlem Stables during a part of 1937 and in 1939 is relied upon by the Government to show unitary ownership and operation.* It is to be observed that during the said periods the city houses were closed and the Lincoln Tavern and Harlem Stables, both in the country, were open. By the same token, merchants, who do not have a given item in stock and who send customers to a neighboring merchant who has the item, should be deemed to be operating as a unit and their business owned by one individual.

The lengths to which the Government was forced to go in its attempt to create some semblance of evidence is made clear by the recurrence to the school which was conducted for "dealers" (Brief, p. 27). This school was not limited to shills from the houses owned by these co-respondents. On the contrary, the record indicates that shills from houses in no way identified or connected with these co-respondents attended that school (2 R. 385). Moreover, nothing in the record discloses how long the school was in operation.

* Indicative of the manner in which the record is strained by the Government, is the statement that *eight* witnesses told of the carrying of customers from the D. & D. Club, The Horse-Shoe, and 4020 Ogden to Harlem Stables (Brief, p. 27). An examination of the record discloses that of the eight witnesses cited, only *four* even tend to bear out this statement of the Government. Witnesses Cusak (2 R. 249-250), Cargett (2 R. 254), Harvey (2 R. 262), Kudesh (2 R. 381-382), cited by the Government, do not support this statement of the Government.

We thus have seen, from item to item, another reason why the Government is adverse to answering the Court's question: That question required *time* data as to each respondent for each count. The sketchy "case" presented by the record falls down too often on the time factor to make it advisable, from the Government's point of view, to answer Question I. categorically.

On the same plane, is the last of the miscellaneous factors upon which the Government relies, namely, the fact that some of the houses at different times used the facilities of the same currency exchanges. Again, this bubble is pricked by the fact that neither Flanagan nor his 4020 Ogden Club ever obtained any currency exchange services at any currency exchange doing business with any of the other gambling houses (3 R. 552-559) and by the further fact that Mackay and Wait obtained their currency exchange and banking services at banks and exchanges different from those employed by the other defendants (2 R. 515, 519; 3 R. 911).

It is to be noted further that the repeated assertion of the Government that the currency exchange transactions of the Horse-Shoe, Lincoln Tavern, D. & D. Club and Harlem Stables were handled through a single account is not the fact (Brief, pp. 27, 29, 50, 58). There was no single account and there were no deposits made in any such purported account. Each check cashing transaction was distinct and separate. In the event a given check was not paid, then the person cashing such check was required to make good. The exchange kept a list of the checks cashed and of the last endorser, so that it knew who cashed the check and could proceed against such person in the event a check was bad. Further, the statement appearing on page 28 of the Government's brief to the effect that checks cashed at the Albany Park Currency Exchange from the different houses were initialed to indicate their source

and that separate envelopes were used for the cash due each house for the checks from it, clearly points to a separate, not unitary, handling of the checks for each of the houses.

How the fact that one Government witness did not recall seeing Hartigan at the Lawrence Avenue Exchange and that another did recall seeing Hartigan eight or ten times, but never saw Kelly there, and the fact that Brown's partner in the exchange brought checks in every morning (Brief, p. 29) proves that Sommers did not own the Horse-Shoe and Dev-Lin, that Kelly did not own the D. & D., that Hartigan did not own the Harlem Stables and Lincoln Tavern, but that all of these were owned and operated as a unit, is difficult to follow, even under the Government's practice of placing inference upon inference. Indeed, the fact that some of the operators at different times employed the services of the same currency exchanges is no more proof of unitary operation and ownership than the fact that several independent business enterprises, who do their banking at one bank, are owned and operated as a unit.

When this Court threw the searchlight on the record by requiring the Government to answer Question I, we expected that the Government's answer would be a count by count analysis as to respondent by respondent, and, parenthetically, if there was any substance to the conspiracy count, that the Government might suggest why if the substantive counts fell one by one there was any reason why the conspiracy count might yet stand. But since the record will not stand the searchlight, count by count, respondent by respondent, even the first step in the Government's theory—that all of the gambling houses mentioned in the record (or even those actually pertinent to the issues) were operated as a unit, cannot stand exposition.

2. There was no substantial evidence that respondents, Sommers, Hartigan and Kelly were not the actual owners of the respective gambling houses claimed and operated by each; there is no substantial evidence that Johnson was the owner of those gambling houses.

The co-respondents, Sommers, Kelly and Hartigan, are presumed under the Government's theory, to be the operators or managers for Johnson. Waiving aside for the moment the pricking of this bubble by the definite implication contained in the acquittal of Creighton, Mackay and Wait,* we must examine first the interests of the instant co-respondents. To arrive at the facts it is important that we consider the Government's theory insofar as ownership of "the houses" alleged to have been operated as a unit under the management of the co-respondents, is concerned. The Government employed the unique device of introducing statements made by the co-respondents under oath to Federal investigators and before the Grand Juries relative to the ownership of certain specified gambling houses (2 R. 462-467). Each of the co-respondents, including those who were acquitted made positive statements under oath asserting that the affiant, or witness, as the case may be, was the sole owner of one or more gambling establishments. Thus Sommers testified that he owned the Horse-Shoe and Dev-Lin (3 R. 809-812), Hartigan that he owned the Harlem Stables and Lincoln Tavern (Government brief, p. 18), Kelly that he owned the D. & D. Club (3 R. 878).

* These last named men were co-defendants, each charged in the substantive and conspiracy counts with Sommers, Hartigan and Kelly. The same type of evidence employed to convict the latter men went to the jury as to Creighton, Mackey and Wait. They were acquitted. We mention this, not as justification for acquittal of the co-respondents, but to demonstrate that a jury, in this case, on this evidence, did acquit three men charged with the same offenses as are Sommers, Hartigan and Kelly.

Instead of the usual rule prevailing, that this evidence introduced by the Government bound the Government on the question of ownership, evidence was introduced to support the Government's theory that when the co-respondents made these statements of individual ownership they were lying and thus concealing the true ownership, presumably in Johnson, and thus aiding and abetting Johnson in concealing his taxable income (if any taxable income actually flowed to Johnson from this theoretical operation). This was in part the alleged scheme whereby the co-respondents are said to have conspired to aid and abet Johnson in the evasion of his income taxes.

Recur for a moment to the background: At the very time when these statements were made by the co-respondents, a Federal Grand Jury in Cook County, Illinois, was investigating them relative to this subject matter. They were so advised by Riley Campbell, Assistant United States District Attorney (3 R. 863). They were (inversely) invited, by threats of Campbell, to lay the ownership of the gambling houses which they owned to Johnson (3 R. 863-864, also 3 R. 821).

Had they done so they would not have been before this Court. Had they testified as the Government wished them to do, namely, to lay the ownership of these gambling houses upon Johnson, they would have been invulnerable to this or collateral prosecution. They well knew, at the very hour the statements of their ownership were made, that the simplest way for them to become defendants in a Federal prosecution, to become defendants in this proceeding, and furthermore, to be indicted in respect to their own individual tax returns, as they were, was to affirm and maintain their ownership as individuals, alone and apart from any interest of Johnson, or any other person in the gambling establishments of each of them.

This background is important because it bears directly on the question as to whether there was substantial evidence to go to the jury as to these co-respondents, not only on the substantive counts but also on the conspiracy count. If there is credible, substantial evidence in this record, on a material fact, and hazy conjecture opposing it, this Court should know—not only *what* went to the jury—but the quality and character of that testimony. While this tribunal will not *weigh* evidence, neither will it suffer the incredible to prevail over the truth. Thus the credibility of the statements of the co-respondents as to the ownership of their respective houses, merits scrutiny.

Having introduced the statements above referred to, setting forth the individual ownership of the houses by the several co-respondents, the Government then proceeded to introduce a plethora of evidence designed to throw suspicion on the individual ownership of the co-respondents.

To show ownership in Johnson, for example, the Government conceives that the procuring of jobs for others by a person indicates that that person is the owner of the place wherein the job was procured. Complementing this, the Government conceives the notion that the word "boss" is indicative of more than casual interest, but designates ownership. Under the sauce for the goose theory, let us examine analogous situations in reference to the co-respondents. Government witness Bingen (2 Rec. 234-235) said that Hartigan employed him at Lincoln Tavern, that Jack Sommers employed him at the Horse shoe, and that Kelly employed him at the D. & D. Government witness Ehrlich (2 Rec. 246) testified "Mr. Hartigan was in charge at the Lincoln Tavern. I don't recall any one else." Government witness Brenner (2 Rec. 384) testified "I worked at the Lincoln Tavern until it closed. Jim Hartigan was my boss all that time." This witness

also testified (2 Rec. 384) "My boss at Harlem Stables was Jim Hartigan—no one else," and again (2 Rec. 386) "When I worked at the D. & D., Mr. Kelly was proprietor—no other man was in charge except Mr. Kelly." Government witness Greenwald (2 Rec. 391) testified that Sommers was his boss at Dev-Lin and that Hartigan was his boss at Lincoln Tavern and (2 Rec. 392) "Kelly was my boss at the D. & D." Government witness H. Meyer (2 Rec. 328) testified that Sommers was his boss. Government witness T. Fahy (2 Rec. 317) testified "Mr. Sommers was my boss at Dev-Lin."

We do not assert the proposition that a porter or a "shill" is competent to qualify as an expert on proprietorship, but if this is the character of evidence indirectly employed to impeach the verity of the statements made by the co-respondents on ownership, then the Government has by that method proved ownership of the gambling houses in question to be in the co-respondents.

Moreover, Government witness Tavalin, agent for the premises where the D. & D. Club was located, testified that he rented the premises to the defendant Kelly (2 R. 16), who operated the D. & D. Club (2 R. 458; 3 R. 878). The renting was handled through Tavalin in exactly the same manner with respect to Kelly as with respect to other tenants in the building (2 R. 14, 23). All of the income received as rent was reported by Johnson in his income tax returns (Government Exhibits R 10, R 11, R 12, R 13, 3 R 950). This is proof, not mere speculation, that Johnson did not own the D. & D. Club.**

*With all of the resources at its command, the Government failed to furnish like testimony as to Johnson being any one's boss.

** The Government did not call the rental agents for the property where the Harlem Stables, operated by Hartigan, was located, nor the rental agents for the respective prop-

No, the inherent weakness of the Government's case appears by viewing it as this Court directed it be viewed. Not by delivering pontifications of guilt, not by the use of italics, not by the employment of round phrases. But by setting up the evidence relied upon for conviction of these co-respondents.

This the Government's brief has failed to do.

3. The evidence as to each of the respondents, Sommers, Hartigan and Kelly as to each of the substantive counts.

The Government has strongly indicated in the opening pages of its brief that it is not in sympathy with the questions propounded by the Court. The questions preclude the device of lumping disconnected, oft times irrelevant, and at no time direct, evidence to any co-respondents in any given year.

We believe that the succinct phrasing of this Court's first question was predicated upon the Court's desire to

erties on which the Dev-Lin and Horse-Shoe clubs, operated by Sommers, were located. The agent for the Harlem Stables property, Walter Sass, was called by Hartigan. He testified that Hartigan rented the property from him in August, 1936, and that Hartigan had paid the rent regularly since that date (3 R. 804-805). The agent for the Horse-Shoe property, Florence Chalmers, called by Sommers, testified that Sommers rented the Horse-Shoe premises in December, 1934 and that he had regularly paid the rent since that date (3 R. 782-783; Defendants' Ex. 8-1-a to 8-1-f and 8-2-a to 8-2-f). The owner of the Dev-Lin property, John Engstler, called by Sommers, testified that Sommers took over the operation of the Dev-Lin property from Wait in May, 1936 and that Sommers had paid the rent for the said property since that time (3 R. 784; Defendants' Ex. 8-4-a to 8-4-f). These witnesses were disinterested in the outcome of this cause and their testimony was unimpeached.

have the Government unravel its web, to determine if any skein or thread inculpated any defendant.

“What evidence” asked the Court “warranted submission by the trial Court to the jury of the charges made as to each of the defendants (a) in each of the four substantive counts, and (b) in the conspiracy count?”

“Charges made as to *each* of the defendants” in each count.

Not to lump a mass of matter and assume it to apply to all—but to spell out its case against *each* defendant, year by year.

This—again—the Government has failed to do in its “Evidence as to the respondents Sommers, Hartigan, Kelly and Brown on the substantive counts”,* (Government’s brief, pp. 67-75). The evidence, lumped as to all of the co-respondents, is sketchy enough—but when the Court’s injunction is followed, the “case” against these co-respondents collapses.

We assume that the Government culled from its 145 witnesses and the large record, every syllable it could reasonably argue was evidence against the co-respondents. Therefore, we shall follow the Government’s brief, pp. 67-75, to delineate the evidence as to each of the defendants, year by year (*i. e.*, count by count).

(a) SOMMERS.

1936—no evidence.

1937—A customer asked for a loan and Sommers said he’d have to talk to the big boss. When asked who

* Since the Government links its “unity of operation and ownership” theories to these co-respondents, we respectfully refer to our brief, pp. 3-20, on this phase of our breakdown of the Government’s case.

this was, Sommers is said to have answered Johnson.

Comment: This witness was impeached by another Government witness, and by himself on cross examination. He related how Sommers dialed the telephone to talk to the big boss. Government witness Moore (3 R. 704), proved that there was no dial telephone at the address and at the time in question. Again, he testified that he gambled wherever he thought there were Johnson houses and would not gamble in any other, and he then proceeds to name other gambling houses never identified with Johnson by any one. That's the "case" against Sommers for the year 1937!

1938—1. Sommers, called to a table over an argument, said that if there were complaints to make them to Johnson.

Comment: It would be topical if Sommers had said "Tell it to the Marines." There might have been some point to the story if, following Sommers' alleged statement, one of the complaining parties went to Johnson, who then, as a proprietor but not as an intermediary or a friend, adjusted the difficulty or complaint, but this instance, like the Rebman statement on the limit of play at a gambling house,* was entirely unconnected with any act by Johnson in derogation of Sommers' ownership of the gambling house.

2. Sommers gave the excuse to the Albany Park Exchange for taking his business away, that

* The witness Rebman testified that she wanted the limit on "Red and Black", which had been reduced, restored. She said she was advised to see Johnson; that she did so and that Johnson said he would see to it. The limit was not restored (3 R. 573).

Brown, the recipient of the business, was in "their" building. (No one identifies "their").

Comment: Insignificant as is this alleged evidence, it is pertinent that no one identified who or what was meant by "their". Perhaps the Government is now seeking to prove that Sommers had an interest in the fee of the Albany Park Bank Building.

3. A customer complained of the limit on a game at the Horse-Shoe, and was told to see Johnson. She said she saw Johnson, who said he'd see Sommers and have the limit changed immediately; it was not changed.

Comment: This is the instance just referred to in a footnote on restoring the limit. Had the limit been changed by the direction of Johnson, there might have been a plausible excuse for the Government's dependence on this testimony, albeit a far cry from ownership. This instance, however, like the instance of calling the big boss about a loan, was at best an illustration of buck passing. Many a man when importuned for a loan or for a decision he did not wish to make will evade by claiming he'll have to talk to Mr. So-and-So about the matter.

4. Sommers was present when Johnson told Brantman not to put his, Johnson's, name in Sommers' income tax return.

Comment: What the record (2 R. 443) really² shows is that the witness stated that Johnson said "I am not the employer of these men * * * don't put my name on there as the employer." If that testimony has value, it must be the affirmative value of corroborating the co-respondents.

1939—Sommers discharged the witness Cobb for stealing quarters at the Horse-Shoe (Cobb's testimony, 2 R. 356) and Cobb, at the trial, testified that when so discharged, Sommers told him that "the only one who can take care of you now is the big boy". And gently led on from there, Cobb testified that he knew who the big boy was. It was Mr. William Johnson, said he.

Comment: *That* is the 1939 evidence upon which the Government relies to sustain its conviction of Sommers. *That* demonstrates ownership of the Horse-Shoe and Dev-Lin to be in Johnson in 1939, infers the Government.

(b) HARTIGAN.

1. (Though no time is set for the first illuminating bit of "evidence" against Hartigan, it so thoroughly confirms this co-defendant's insistence on ownership that it bears repeating in this brief):

A "shill"—Cobb (whose entire testimony is worth reading if only for comedy relief)—stated that Hartigan threatened to discharge a crew of "shills", of which the witness was one, for theft. Hartigan didn't threaten to call Johnson—Hartigan threatened to "fire the crew". Customarily, that is one of important criteria of ownership,—the right to hire and fire. The right to hire is set up by the Government as strong indication of Johnson's ownership; the right to fire must have some weight, even when inconsistent with the Government's theory.

2. (No year is set for the next link in the chain against Hartigan, but it seems important to the Government's theory; we believe it confirms the co-respondent):

Hartigan, when berating the crew for the unaccounted disappearance of money, told them not to say they were working for Mr. Bill Johnson. That is taken by the Government as evidence that they were in fact working for Johnson.

3. In 1934, Hartigan, relating a gambling incident, said "That was before I worked for Bill" and that since Johnson was called Bill so often, he assumed it was Johnson. The Court said (2 R. 302) that this testimony could stand for what it was worth.

Comment: Indulging in another Governmental assumption, that Johnson was the only man in Chicago called Bill, this conversation in 1934 might fill space in the Government's brief, but is scarcely evidence that Hartigan was not the owner of the Harlem Stables and Lincoln Tavern in 1936-39, both inclusive.

1939—1. Witness Lang (Government brief, p. 70, 2 R. 319-21) is alleged to have been hired by Hartigan in response to letters to Johnson.

Comment: Lang did testify that he wrote to Wm. R. Johnson for employment; that he later received a telephone call from an undisclosed source, to report to a man he later identified as Hartigan. He did not see Johnson after (or, presumably, before) writing the letters.*

* The record discloses (1 R. 77-79) that there were hundreds, perhaps thousands, of employees of the gambling houses from time to time during the years 1936-1939. If it be true that Johnson was instrumental in obtaining employment for four or five men during this period, can it be evidence even remotely tending to prove ownership in Johnson of the establishments where the men got work? Important customers, clients, patients have a great bit of influence in this respect. And that Johnson was an

2. A note signed Bill presented by another witness to Hartigan, resulted in employment.

Comment: It was given to the witness by his friend, *William Rosenthal*, who wasn't nicknamed "Jack" or "Joe" so far as the record goes. In fact, the record indicates he might have been called "Bill" (2 R. 348).

(c) KELLY

There is no evidence in any year, on any count, tending to show anything. The most that the Government was able to glean from the record, in answer to the Court's definitive first question, is the following:

In 1935, Kelly's 1934 tax return was being investigated. Brantman, the accountant, appeared at the Collector's office for Kelly, says Updike, the witness relied upon by the Government to bring the names of Kelly and Johnson into the same sentence. Brantman told an auditor for the collector that he did accounting for the employer of Kelly. Who was this employer? The record and the Government's brief are silent on this point. But the Government has shown that Brantman did work for Johnson, hence,—

That is the Government's case against Kelly on the substantive counts.

The years 1936, 1937, 1938, 1939:

Well, says the Government, we have shown unitary operation of gambling houses, a vast

asset to any gambling establishment as a drawing card, goes without question. If sending notes or making calls to industries or businesses, requesting that Blank be put to work, is substantial evidence of ownership in the man requesting that another be employed, then indeed title records and stock certificates are tenuous and precarious indicia of ownership.

amount of dollars gambled, a theory that currency exchanged and checks exchanged for currency equals income—"and the guilt of the respondents Sommers, Hartigan and Kelly in aiding and abetting the attempted evasion becomes clear."

On page 70 of its brief, the Government substitutes innuendo, argument and inference for the evidence required by the Court's question! It sums up the flimsy tissue hereinabove detailed and concludes: "Each of the respondents, during all of the years covered by the indictment participated in the operation of the gambling houses in question in a manner to conceal Johnson's financial interest in the houses and the amount of the incomes of the houses." Again, by stating the ultimate legal conclusion, the Government waives aside and away the modicum of required evidence.

. . .

But there was one further attempt made, in the Government's brief, to reflect a case against the co-respondents. It recites and again attempts to refute, the statements of ownership, made by the several co-respondents to revenue agents, in 1939.

We have heretofore (pp. 17-19) discussed this ingenious device of employing the statements of these co-respondents as a basis—not for their verity—but for attacking them collaterally by "shills" and porters' testimony in derogation of the facts set out in the statements—*i. e.*—ownership of certain designated gambling houses. We have discussed the background against which these statements were made—indictment and prosecution if the co-respondents insisted on the fact of their own several ownerships; release from the slightest imputation of wrong if only

the co-respondents would place ownership in Johnson. Under indictment, on trial here, the co-respondents persevered in their insistence that they and each of them owned the gambling houses originally claimed by them as theirs alone. And, as earlier set forth in this brief, we believe the Government's own record and witnesses corroborate the ownership statements of the co-respondents. "Boss," as to Johnson means "owner," says the Government. "Boss" as to each of the co-respondents means "employee of Johnson," says the Government—when Government witness after Government witness tells how he was hired, worked for and fired by the co-respondents.

. . .

Not a farthing of gambling house income has been shown to have trickled from the co-respondents into Johnson's hands. Not even a Goldstein was brazen enough to say "Why yes—I took \$10,000 from the tables at the D. & D. and bought a building for Johnson—and Kelly stood right there and smiled." Not even a Goldstein was venal enough to say "Hartigan took \$5,000 from his pocket and told me to give it to Johnson, and not to forget to tell Johnson—Wm. R. Johnson, please—that it represents his interest in this week's play at Lincoln Tavern." Not a syllable in the huge record even tended to link these co-respondents with the respondent Johnson in any relationship dealing with, or even fringing upon, the offenses charged.

Certainly these co-respondents had many common interests; certainly these co-respondents were even and always in variance with the State and local laws affecting gambling. Certainly it was greatly to their mutual advantage to associate, one with the other, at any one or more of the gambling houses, when any other particular house or houses were closed down. That Sommers, when the Horse-

Shoe was closed, would be found at any other gambling house, in any capacity whatsoever, is neither sinister nor remarkable. Even in legitimate enterprises, business men work with and for each other under a great variety of occasions.

That such infrequent happenstances can be used by the Government to assume or speculate upon the so-called "unitary operation" is demonstrative of the inherent weakness of the Government's case against the co-respondents. The coincidence of employment of the same carpenters by several gamblers, of the joint use of bus or telephone service by three others, does not strengthen that weak case. Surely the employment of the same accountant, or cook, or lawyer can be no better indication of unitary operation. There once was a day when competitors were often deadly enemies, but for many years the trend has been the reverse. It has become good business to fraternize with a competitor, to use the same services, to exchange ideas, to adopt identical programs and policies. Take any industry, whether it be retail coal merchants, wholesale scrap metal men, or building material producers. If one finds an efficient accountant or lawyer or trade paper or carpenter-contractor, the industry—or, to analogize here, several firms from within the industry—will employ or use that man or service. That such employment would be grounds for predicating an anti-trust case against the few who used the common service, falls by stating it.

This is all of the evidence in the record, upon which the Government relies, to connect these respondents with the suspicion that they were not the true owners. The Government offered, in its case in chief, in corroboration of these co-respondents, evidence of a far higher character than that which they introduced to point ownership as being in Johnson.

4. The evidence on the substantive counts as to the respondent Brown.

It is not enough to say that if there was enough evidence to go to the jury as to the respondent Brown, then every banker, bank teller and cashier who testified for the Government that they too handled the gamblers' checks should have been indicted and connected with Johnson, as co-defendants. Let us instead analyze what the Government conceives to be its case against this respondent.

Brown had been a teller in the Ogden National Bank in Chicago and had known Hartigan (3 R. 615, 616). In testimony given by Brown to the Grand Jury in January, 1940, and introduced in evidence in the trial court (3 R. 620), it was disclosed that Brown approached Hartigan with the idea that Brown thought the operation of a currency exchange would be profitable, and that Hartigan could direct to the currency exchange profitable business.*

The record discloses that each advanced approximately \$2,000.00 to start the venture (3 R. 623). Hartigan protected his \$2,000.00 by putting his niece in the Lawrence Avenue Currency Exchange, as it was called, and she was reflected as a partner on the books, but was in fact an employee (3 R. 623). It is undisputed that the gambling

* The evidence disclosed that at this time the witness also knew Johnson (3 R. 618). If Johnson were the owner of the gambling houses and if Brown wanted to be part of a cog in Johnson's alleged gambling house machinery, it is far more likely that he would have sought out Johnson, rather than Hartigan. A porter or a yard man or a "shill" might confuse a manager with a proprietor, but a former bank official such as was Brown would not do so— if the Government's theory that Brown had knowledge of the alleged scheme, is followed. But he did not see nor talk to Johnson!

checks exchanged represented approximately 60% of the business of the currency exchange, and that 40% was business which Brown was able to attract to the exchange from other sources (3 R. 651). The gambling house proprietors would send in checks to the currency exchange. Brown would cash those checks at his bank (initially North Shore National Bank), and irrespective of the balance of the currency exchange at that bank, the bank would honor the checks but charge Brown interest on them until they were collected (3 R. 649-654).*

Then the Government produces what it concludes is a most forceful circumstance, to show Brown's complicity in the scheme to aid Johnson: It discloses that he went to his landlord, Goldstein, to ask aid in making a new bank connection. Nowhere in history has the owner of a legitimate business asked his landlord for help. Nowhere in the field of industry has a man gone to his landlord to suggest that he will have to go out of business and thus discontinue being a tenant unless that landlord can assist him in some way; at least, that is the Government's inference. But this particular landlord testified that he acted for Johnson in purchasing the building in which the currency exchange was located. This, the Government argues, is proof, is evidence, that Brown was a fellow to aiding and abetting Johnson. It is a suspicious link in the circumstance, says the Government. The Government's argu-

* The North Shore National Bank required Brown to take the currency exchange account from the bank because, as the Government states in its brief at page 78, "too many of the checks deposited were returned for insufficient funds" (3 R. 642-643). It is unquestioned that the gambling house proprietors who deposited the N.S.F. checks had to make good these "too many checks", but the Government neither totalized nor deducted the insufficient funds checks from the supposititious "income" of the currency exchange transactions.

ment is that Johnson bought the building for the purpose of setting up a currency exchange for his alleged gambling houses. The brief of the Government is silent on the fact that Brown did not start his operations until a year after the building had been purchased by Goldstein (3 R. 617).

But the Government has still a further damning bit of evidence against Brown. They produced the witness, Bagshaw, who testified that after Brown closed the exchange on September 30th, Brown said he "had lost the Johnson account" (2 R. 542). Let us join in the Government's assumption that the Johnson referred to was the defendant here. Let us assume that Bagshaw was telling the truth in that part of his testimony, and was not telling the truth two minutes later (2 R. 537) when he testified: "I questioned him 'why close up'? That's the way our conversation went, along that line. Brown didn't exactly say anything when I pointed that out to him. He was just determined to close up, that was all there was to it". Let us waive aside this implied denial that the name "Johnson" was ever mentioned by Brown to Bagshaw. Instead let us assume that Brown thought that this Johnson, Bill or Jack, male or female, had a great influence in the matter of the gamblers' checks being cashed at Brown's currency exchange. Let us even go further and assume that Brown thought that Johnson dominated or controlled the business of cashing gamblers' checks at Brown's currency exchange. In what possible or conceivable way does that fasten the crime here charged against Brown or tend to prove it, or, more pertinently how is it supporting evidence to go to the jury to sustain the conviction of Stuart Solomon Brown?

There is not an iota of anything which resembles evidence in the record that Brown knew or could have known

that Johnson had any interest whatsoever in the gambling houses; but assume he did think Johnson had such an interest, how can he be held to have aided or abetted Johnson or have colluded with the other co-respondents to conceal the taxable income of Johnson? It may as well be assumed from the record that Brown's depositories, the banks, were part and parcel of the conspiracy to aid Johnson in the evading of his income tax return, or at least to assist Sommers, Hartigan and Kelly in falsifying their returns.

On page 79 of its brief, the Government refers to Brown's Grand Jury testimony in this language: "Brown admitted that Hartigan had told him there would be no more checks". Why "admitted"? If the gambling house owners who contributed toward 60% of the currency exchange business were closing, of course there would be no more checks from that source, and who would be more likely so to advise Brown than Hartigan, his partner in the currency exchange?

Perhaps that's it. Perhaps the fact that Hartigan, whom the Government charges helped Johnson conceal income, was a partner of Brown in the currency exchange must perforce make Brown vulnerable to conviction under the instant indictments. The stating of the proposition refutes it.

But there is another grave charge against Brown: After his currency exchange closed, he destroyed the books and records when he no longer needed (3 Rec. 628, 640, 642, 648, 649, 657 and 673). It also was developed that Brown is charged with eluding a Revenue Agent for several days before appearing before the Federal authorities in answer to a summons.

We have detailed all of the evidence which the Government concludes is its case against Brown. This evidence

was expanded* from the middle of page 75 to the bottom of page 80 in the Government's brief, and interwoven there was a mass of immaterial items in order to make "the case against Brown", and is characterized by the Government at the bottom of page 80 of its brief thus: "As above shown, the evidence against him was strong . . . His entire method of operation and the elusive dealings with the Revenue Agent showed he was wilfully aiding and concealing the amount of the income of the gambling houses and Johnson's interest thereon".

We will not say that it is unconscionable to make such a statement or an argument in this Court, but we do spe-

* Among the details recited as to respondent, Brown, and the only purpose of which must have been to take up space in the brief in order to make a number of paragraphs, are the following:

1. The Lawrence Avenue Exchange was located a short distance from the Albany Park Exchange, and when Brown informed the owner of the latter that he was going to open the Lawrence Avenue Exchange, the owner of the Albany Park Exchange protested.

2. A detailing of the relationship of Bernice Downey, whom Hartigan put in to protect his investment.

3. Half of a page on Hartigan's introduction of Sommers, Kelly and Creighton, and a recital that Hartigan obtained the business of their houses for the currency exchange.

4. Half of a page relating to the closing up of the business in September, 1929, despite the fact that Brown "had a large amount of other business". It is interesting here to note that the Government has already shown "that the other business" was but 40% of the total business of the currency exchange. A loss of 60% of one's business is not an absurd reason for going out of that business, we take it.

5. A page detailing the conflict of testimony involving the burning of the record, which, parenthetically, Brown stated he didn't need (3 R. 637); he kept those necessary for the liquidation of the business.

cifically urge (and the liberty of one of the co-respondents depends upon it) the reading of the Government's argument as to its case against Brown (Government's brief, pp. 75-80).

5. There was no substantial evidence as to either the gross or net income of the gambling houses.

A vital link in the Government's case is predicated upon the exchange of currency and the cashing of checks at various currency exchanges and banks. Contrary to the statement in the Government's brief, currency exchanges do not accept deposits and no deposits were made by these operators. These transactions of the gambling house operators consisted merely of the exchange of old currency for new and the cashing of checks.

Before demonstrating that such currency exchange transactions do not establish gross, let alone net, income to the gambling house operators, it is to be emphasized that *there is no proof in the record of the amount actually involved in these transactions.* No record was kept of currency exchanged by the currency exchanges and banks (3 R. 605). No record was kept of the amount of new currency exchanged for old at the Albany Park Currency Exchange. The alleged amount of currency exchanged at that exchange was determined solely from deposit slips issued by the bank to the exchange when the latter made exchanges of old currency for new, in banks (2 R. 485-487, 492). The owner of the exchange stated that from time to time he had an over-plus of currency, *i. e.*, he had more currency than he needed for the purpose of running his exchange. This cash would be sent back to the bank by the currency exchange and appeared on the same slip and was included in one amount with the currency exchanged by the houses (2 R. 491-492). The currency exchanged by the gambling houses was not shown separately on the slips, and the

owner of the exchange admitted that he could not tell whether the currency shown on the slips represented currency exchanged for the gambling houses or the redeposit of excess currency by the exchange itself (2 R. 492, 498).

While it is stated on page 54 of the Government's brief that in the Government's computation of income, amounts were eliminated as to the currency exchanged, to allow for such redeposits of excess currency by the exchange itself, it is difficult to conceive (and the Government has failed to demonstrate) how any such "allowance" approaching any degree of reasonable accuracy or approximation, could be made. It, like the entire "revolving fund equals income theory" of the currency exchange transactions, is sheer speculation.

Again, in the case of the Northern Trust Company, there is no proof as to the amount of currency exchanged. A special paying teller testified that he exchanged currency for Sommers approximately eighteen times a year during 1936, 1937, 1938 and the first half of 1939. No records were kept (2 R. 507, 3 R. 605) but it was *estimated* that the currency aggregated about \$90,000 a year (3 R. 605). On cross examination the teller stated that he did not know whether the same \$5,000 bankroll was handled eighteen times a year or whether there were eighteen \$5,000 bankrolls involved each year (3 R. 605).

Likewise, the manager of the Lawndale Currency Exchange had no idea as to how much the currency exchange transactions totaled (3 R. 552-559). The Government arrived at an amount by the total amount of \$100 bills handled by the exchange during 1936, 1937 and 1938.

In an attempt to show the amount of checks cashed at the Lawrence Avenue Currency Exchange, the Government relies upon the purported statement of Brown to Bagshaw, an accountant for the exchange, that the funds recorded in an account entitled "Reserve for Uncollected

Funds" were from one source and that source was "Mr. Johnson." The accountant stated that no given name was mentioned and that he did not know what Johnson Brown was referring to (2 R. 542-543), or whether the Johnson was male, female or a corporation. Even the Government concedes that at most this statement is an admission chargeable only against Brown, and not against Johnson or the other co-defendants.

It is argued that in the reserve account mentioned above there were recorded only checks forwarded for collection and not paid immediately. The gambling house checks are *assumed* to have been forwarded for collection. It is then concluded that the alleged amount of checks recorded in that account represent gambling house checks and only gambling house checks. Yet there is no testimony to show that the only checks so recorded in the said account were the gambling house checks. Further, the Government concedes that there were included in the alleged amount of gambling checks cashed at the Lawrence Avenue Currency Exchange, checks cashed by Creighton. The Government seeks to explain away the presence of the checks so cashed by Creighton by stating that the amount of checks so cashed by him was not great because Creighton stated that he cashed "some checks" or "a few checks" at that exchange (Brief, pp. 60-61). However, Creighton did state that "after Hartigan asked me to take some business there (Lawrence Ave. Currency Exchange) I took quite a few checks up and * * * either Fred Gitzen or I did take the checks up to Lawrence Avenue whenever we had checks to cash" (3 R. 868-869).

An analysis of the evidence thus shows that there is no proof in this record of the amounts actually involved in the currency exchange transactions. The amounts alleged by the Government are a result of assumptions, inferences and conjectures. However, even if the amounts of the

currency exchange transactions alleged by the Government be taken as true, it is manifest that the guesswork testimony as to such amounts of currency exchanged and checks cashed, did not constitute substantial evidence sufficient for submission to the jury, as to the question of gross income, let alone net income, of the gambling houses.

(a) EXCHANGE OF CURRENCY

The Government attributes more than \$648,000, as alleged income, to the gambling houses predicated on and only on the purported amounts of currency exchanged by the houses at banks and currency exchanges (Brief, pp. 52-53).

Even a cursory examination of the Government's brief, let alone the record, reveals the weakness of its contention here. The Government concedes that the money of denominations less than \$100.00 received in exchange for currency, represented working money used on the gambling tables, and was an exchange of old money for new money, and did not represent winnings, gains or income to the houses (Brief, p. 63, 2 R. 491, 508, 3 R. 604-605). Further, the Government's brief at page 55 states that only "a portion of the currency exchanged at the Northern Trust Company was exchanged for \$100 bills, the remainder being in smaller denominations." The record discloses that at most only 14% of the total currency exchanged at the Northern Trust Company was exchanged for \$100 bills (3R. 604-605). Yet the Government in its so-called summary of the income of the houses (Brief, pp. 52-53) attributes *all* of the purported total of \$340,000 in currency exchanged at the Northern Trust Company as income to the gambling houses, although 86% of that was in the lesser denominations, and even under the Government's contentions constituted only working money and not income!

Likewise, at page 54 of its brief, the Government notes that at most, only one-half of the currency exchanged at the Albany Park Currency Exchange was taken in hundred dollar bills. The remainder was taken in lesser denominations. Yet the Government attributes the total amount of currency purportedly exchanged at this currency exchange (some \$234,800) as income to the gambling houses (Brief, pp. 52-53). It is upon such treatment of the alleged facts that the Government predicates its case.

After conceding that the money in denominations of less than \$100 received in exchange for currency did not represent gains or income (being exchange of old money for new), the Government urges that the \$100 bills so received in exchange for currency were taken out of the business as income and do not represent an exchange or turn-over of money. The only argument which the Government is able to pose in support of this conclusion is to assert that the working money used on the gambling tables were only of lesser denominations. But even the testimony of the Government's witnesses discloses that \$100 bills were used as working money (2R. 218), also defense witnesses (3R. 803, 3R. 859, 3R. 816, 3R. 792, 3R. 795, 3R. 939). So that try fails.

Moreover, the \$100 bills were used almost exclusively at the houses in the payment of winnings over that amount. That fact stands unchallenged in the record (3R. 792-793, 795, 879, 939). Further, the record discloses the unchallenged and undenied fact that whenever a customer ended his play (be he winner or loser) and had money in small denominations he was asked to turn in the smaller denominations for \$100 bills because the small denominations were needed as working money. The record discloses that a principal source for the smaller denominations for the houses were the customers who were given \$100 bills in exchange for such smaller denominations

(3R. 792, 795, 879). The record makes it manifest that the \$100 bills were not taken out from the business, but on the contrary, were used in the business and were essential to the operation of the business.

The frailty of the Government's position on this so-called *proof* of income is made manifest by its attempt to answer these uncontroverted facts by asserting in apparent seriousness that the amount of \$100 bills makes the facts "implausible" and that the jury "in all events" had the advantage of judging the veracity of the witnesses' statements from their demeanor on the witness stand (Government's brief, page 64).

(b) CASHING OF CHECKS

The Government argues that the receipt of a check from a customer by a gambling house is "substantial evidence of the house's receipt of income" (Brief, pp. 61-62). This conclusion upon which so much of the case of the Government rests, is predicated upon a series of premises and unwarranted inferences which do not find support in the record or in reason.

At page 61 of its brief the Government cites the testimony of Kauders (2R. 405), in support of its assertion that customers cashed checks in gambling houses only to pay losses. All that this witness for the Government said was that on occasion *he* cashed checks at the gambling houses and that the checks he so cashed amounted up to several hundred dollars. *There is not one syllable in his entire testimony, upon which the Government relies, which even suggests that he cashed his checks to pay losses or that he gave such checks after his cash was gone!*

The Government relies on the testimony of Kelly (3 R. 879). An examination of the record discloses that Kelly stated, not that the amount of checks cashed represented

the amount of customer's losses, but on the contrary, checks were cashed to accommodate patrons and to furnish them funds with which to gamble (3 R. 879). Some of the cash so obtained might be lost by the customer (3 R. 879), but likewise, that cash used in play might result in winnings. At page 61 of its brief, the Government seeks to rely upon the testimony of Sommers in support of its assertion that the amount of checks cashed represents the amount of customer's losses and therefore the amount of income of the gambling houses. Not only does the testimony of Sommers fail to support this contention of the Government, but on the contrary, *disproves it. Sommers testified that when checks were cashed, the proceeds did not represent profits or gains to the gambling house. It had no relation to such profits. Checks were cashed as an accommodation to customers (3 R. 816).*

Hartigan, in his statement to Internal Revenue Agents which was introduced by the Government, made clear just what the cashing of checks by the gambling houses represented. Checks were cashed to furnish customers with money for play. Further, some checks were cashed for customers after play to provide them with money for personal use after leaving the gambling house (2 R. 463-464). The amount of checks cashed therefore does not represent losses of customers or income to the houses (2 R. 468). The Government itself proved this.

The fact that a patron obtained cash with which to play, for his check, clearly does not lend any support to the Government's conclusion that the amount of cash so obtained was lost and therefore represented income to the gambling houses. Furthermore, should a patron of a gambling house cash a check, win money, and then redeem or pick up his check, he would be under the cloud of not having had sufficient funds to support that check. Hence

no matter how many checks might be cashed to commence play, and no matter how great the cash winnings of the players who gave those checks, the players would leave with currency, not their checks.

Further, it is to be observed that the Government introduced into evidence detailed records of the Albany Park Currency Exchange showing that during the period from June, 1936 to July, 1938 more than \$1,200,000 in checks were cashed by the gambling houses. These detailed records disclosed not only the bank upon which each of the checks so cashed were drawn, but also the maker of each check (2 R. 480-483). The Government also introduced the testimony of Agent Lawrason who summarized a great number of checks aggregating about a half a million dollars allegedly cashed by the co-defendant, Creighton, at the Mid-City National Bank. This summarization was made by Agent Lawrason from his examination through a magnifying projector of recordak films which he said showed these checks (2 R. 519-521, 3 R. 715-721). Agent Lawrason spent about five weeks examining those recordak films (3 R. 716). *He stated that memoranda were made of the names of the makers of the checks in question* (3 R. 721). The Government, therefore, had before it the names of a vast number of patrons. It is significant that to support this important assertion of the Government, upon which so much of its case rests (in a case in which the Government called over 145 witnesses) *only two* of the patrons called by the Government gave even meager support to the contention that the checks cashed represented losses and then only as to themselves.

These two (Blake and Bissell) are said to have stated that the checks which *they* cashed represented losses. This is the only testimony in the entire record which lends any support to the Government's contention. (But as we will

demonstrate in a moment, even these two witnesses did *not* say that.) It is reasonable to infer that the Government interviewed many, if not all of the patrons whose names it had obtained. Further, these patrons must have been asked whether the checks which they cashed represented losses or merely represented the furnishing of money or chips with which to play or in part represented the cashing of checks for accommodation to obtain cash for personal use. *Had those patrons stated that the checks which they cashed represented losses*, the Government, in its carefully prepared case, would undoubtedly have introduced their testimony. When it comes to the field of assumption, so glibly indulged in by the Government, we have the right to one little assumption, and we assume that everyone of the thousands of patrons whose names appeared as makers of checks, if and when called in or upon by the Federal investigators, repudiated the "checks mean losses" notion!

But neither of the said patrons (Bissell and Blake) called by the Government, stated that they had observed or knew that their individual experiences with respect to cashing checks constituted a general practice at the gambling houses which they frequented. Bissell testified that he was furnished money with which to play.

But to put a record citation in their brief as to the witness ~~Bissell~~, was indeed a bold step on the part of the Government.

What, in fact, did he say?

"Q. In other words, you don't want the Court and jury to understand that these Exhibits X-1 to X-138 (checks) represent the net loss that accrued to you during your gambling transactions at those places?

A. *No, by no means. In other words, there was winnings and losses.*" (2 R. 220).

The record time and again demonstrates that checks were cashed to furnish money (or chips) for play, and did not represent losses (3R. 463-465; 3R. 816, 879).

Moreover, even Blake testified that the checks he cashed represented not only the amount of *his* loss for the evening, but also represented amounts which he would take with him after leaving the gambling house for personal use (2R. 220).*

Some of the checks cashed by the houses were cashed as an accommodation to neighboring merchants and some were pay roll checks of the employees of neighboring business houses (3R. 879, 816, 842). Nothing in the record in any way negates this testimony. The only attempted refutation by the Government is relegated to a footnote on page 62 of its brief. That attempted refutation takes the form of a query wherein it is asked how many working men and neighboring tradesmen would seek out a gambling house with the alleged searching for fire arms upon entrance in order to cash a check. In answer to this question, it is to be observed that persons who were known (such as neighbors) were not searched for fire arms (2R. 216). Moreover, if any establishment is prey to impositions, or stated reversely, is open to favors for and on behalf of neighbors, a gambling establishment is that one. The corner drug store may coldly turn down the check passer; the grocer may say he hasn't the cash on hand—but the gambling house owner needs the indulgence and good will of all of his neighbors.

The exchange of currency represented nothing but an exchange of the houses' bank roll, not income or gains.

* Inadvertently (again) the Government neglects to mention that the witness Blake played only at Club Southland, Club Western, and 11901 Vincennes Club—all owned and operated by Crichton—who was acquitted. Blake did not even state that he was ever in, about, or near any gambling house of these respondents.

to the houses. This the Government, for all practical purposes ultimately concedes (Government brief, p. 63). Likewise, the cashing of checks by the houses for their customers and others did not represent income to the houses. The record discloses that in cashing checks for the customers and others the gambling houses were acting in precisely the same manner as did the currency exchanges and banks to which they in turn presented these checks. The checks cashed by the houses for their patrons represented, not gains to the houses, but an exchange of the customer's checks for cash which was used for play. In addition to checks cashed for this purpose, the record establishes that a considerable portion of the checks cashed were merely for the accommodation of customers and others (2R. 464, 3R. 816, 3R. 879), and the cash received for such checks was not all used in play but some was taken from the houses by such customers and others. Neither the record, nor any reasonable inference from any fact in the record, supports the Government's position that either the exchange of currency or the cashing of checks at the currency exchanges and banks is evidence of unreported income—the basis for the entire case of the Government against Johnson and the co-defendants.

(c) INCOME REPORTED BY RESPONDENTS, SOMMERS,
HARTIGAN AND KELLY.

The Government's case against these respondents assumes that the gambling houses had a net income in each of the years 1936 through 1939, as disclosed by the charts on pages 52, 53 and 66 of the Government's latest brief, to-wit:

\$485,294.28 in 1936
852,890.56 in 1937
850,994.20 in 1938
926,499.30 in 1939

The bald assumption that currency exchanged and checks cashed at currency exchanges represents income predicated upon the wholly unsupported theory that all checks cashed most certainly represented winnings and, therefore, income, has been dissipated herein before (*supra*, pp. 36-46).

There is, however, a conclusive and positive check in the record on the question of income of the gambling houses that gives us with mathematical certainty the answer to the question on income of these co-respondents. No speculation, guesswork or assumption is required. The information which gives us a verification of the income tax returns of Sommers, Hartigan and Kelly is in the record, elicited by the trial court.

The trial Judge developed the only real information in the case (other than the returns of the co-respondent) on the question of income of the gambling houses in question in the years here questioned: He developed through a witness whom he made his own that the house percentage on the game of dice is 2%; and the percentage on roulette games is 5 5/19% (3 R. 846). These percentages may be used to approximate the total gross income of the houses from these games if the total amount bet by patrons on the games is known, or to approximate the total amount bet on the games by patrons if the total gross income from the games to the houses is known. To illustrate, the five (5) houses owned by the respondents Kelly, Hartigan and Sommers had a combined total payroll of \$937,000 (1 R. 77-80, 86-89, 94-97), for the year 1939. The combined net income of these respondents from their houses in that year was \$37,000 (Government Brief, pp. 71-72). The other expenses of the houses are shown (Government Brief, pp. 88-90) to bring the total of expenses plus the net income to these respondents for the year 1939, over the \$1,000,000 mark, which is the gross income of the houses for that year. If this represented 5 5/19% of the total amount bet by patrons they must have bet over \$19,000,000 during 1939.

If this represented 2% of the total amount bet by patrons they must have bet over \$50,000,000 that year. The actual amount bet probably lies somewhere between these limits.*

The Government has sought to throw a cloud over the income tax returns of these co-respondents by assuming that the currency exchange figure of \$926,499.30 in 1939 was income; that the three co-respondents, Sommers, Hartigan and Kelly reported an income of \$37,567.00, and then the Government just assumed that the difference between the supposititious income of \$926,499.30 and the sum of \$37,567 reported by these co-respondents, is the concealed income of Johnson for the year 1939!

"By their very returns, therefore," (says the Government in its brief on page 44), "the respondents portray Johnson in his true stature in their operations," and again, on page 83, the Government argues that these co-respondents would not have conducted "an illegal enterprise" * * * for so long a period of time unless it were profitable and indeed unless the net income were commensurate with the risks involved"!** In other words, the Government dis-

* The Government admits that not all of the \$886,499.30, total of checks cashed, in 1939 is properly attributable to Sommers, Hartigan and Kelly (Footnote 19, pp. 60-61, Government Brief). The record shows that not all of the checks cashed by them were cashed by patrons for the purpose of obtaining money with which to play these games.

We have shown above that checks (other than many purely accommodation transactions) were cashed for patrons so that the patrons could have cash with which to play the games. At most therefore, the amount of checks cashed is an index to the amount of money patrons had with which to make bets. That there may have been more than \$886,499.30 available for use for the purpose does not require (as the Government in substance and effect asserts) that the total of bets made by patrons exceeded an amount ranging between \$19,000,000 and \$50,000,000.

** We believe it is common knowledge that at that time, in Cook County, Illinois, the risks involved consisted of a maximum \$200 fine.

plays a very large amount of money in the form of currency exchanged, and checks cashed, sets this off against a far smaller amount of money, *i.e.*, the individual income reported by the co-respondents, Sommers, Hartigan and Kelly in their returns for the years in question, and concludes that it is preposterous that these men would let \$926,000 go through their fingers and only retain a gross of some \$37,000.

We repeat, however, that the only evidence in the record worth consideration (and elicited by the Court) fixes the ratio of gross profits to money handled. That this is not a fantastic or preposterous relationship between money handled and gross income in this case is evidenced by a more sacrosanct form of speculation: In all legitimate brokerage houses in America the standard charge for purchase and sale of securities is $\frac{1}{4}$ of 1%. A brokerage house, whether on Wall Street in New York or LaSalle Street in Chicago, must handle a million dollars in checks and currency in the purchase and sale of securities before it realizes a gross profit of \$2500.

To recapitulate, we have demonstrated that the "evidence" relied upon by the Government to sustain a conviction against Sommers, Hartigan and Kelly must perforce rest entirely upon proof that they respectively and collectively returned false statements of income with the intention of aiding Johnson to conceal his taxable income. The most critical link in the Government's circumstantial and supposititious chain must be that of currency and checks exchanged; it must rest on the theory, to which the Government still clings, that currency exchanged and checks cashed are tantamount to income—net income, or even substantial net income. The argument that the transactions with the currency exchanges

did not represent net income having been refuted, the Government's case against these co-respondents on the substantive and the conspiracy counts is entirely without support. Whatever affinity there may have been between the various owners of gambling establishments, whether in one year two of them used the same trucker, or three others employed the same carpenter, or three more gambling house proprietors used the same bus service, or whether every gambling proprietor of the hundreds in Chicago used the same public utilities, that is not evidence even remotely tending to prove that the co-respondents aided or abetted Johnson in evading his income tax, or that they conspired in an attempt so to do. The use of the same messenger service, statistical bureau, ticker service and blackboard chalk by several stockbrokers, has the same substance upon which to predicate unitary operation and common ownership. The Government's case against these co-respondents then falls with the Government's currency exchange assumptions.

B.

The evidence as to the conspiracy count as to each of the respondents, Sommers, Hartigan, Kelly and Brown.

The conspiracy count charges the respondents with a conspiracy to defraud the United States of income taxes allegedly due from Johnson for the years in question, 1936 to 1939.

This Court has repeatedly held that the gist of an offense of conspiracy is "agreement among the conspirators to commit an offense attended by an act of one or more of the conspirators to effect the object of the conspiracy." *United States v. Falcone*, 311 U.S. 205, 210, 61 Sup. Ct. 204, 207; *Pettibone v. United States*, 148 U.S. 197, 13 Sup. Ct. 542. To support the charge against these respondents as to the conspiracy count, the Government must show by substan-

tial evidence that there was not only an agreement among the alleged conspirators, but that the object and purpose of that agreement was as charged, namely, to defraud the United States of income taxes allegedly due from Johnson for the years in question.

There is no direct evidence of an agreement, or concert of action among the alleged conspirators for the purpose and object of evading Johnson's income tax, and the Government does not contend that there is such direct evidence.

In its treatment of the conspiracy count on pages 81 and 82 of its brief, the Government concedes that the only evidence upon which it relies to establish concert of action and that the purpose of that concert of action was to defraud the United States of income taxes purportedly due from Johnson, is precisely the same disconnected and irrelevant mass of circumstantial evidence upon which it seeks to sustain the charges on the substantive counts. While there may be a conspiracy to defraud the United States of income taxes due from an individual without proof of the actual commission or attempt to commit the crime by evading such taxes, that is not the case here. In this case the Government seeks to rely upon, and only upon, the evidence with respect to the alleged evasion of income taxes by Johnson for the years in question, to prove not only the agreement between the alleged conspirators, but that the object of that purported agreement was to defraud the United States of Johnson's income taxes. With the failure to prove that Johnson owned the gambling houses operated by the defendants, that he received the income from them, that the income so received was greater than that reported by Johnson in his returns, the Government failed to prove the alleged conspiracy to defraud the United States of income taxes allegedly due from Johnson. With the failure to furnish substantial evidence to support

the substantive counts, there was a failure to support the conspiracy count.

Since the evidence relied upon by the Government to support the conspiracy count against each of these respondents is precisely the same as that relied upon to support the substantive counts, the comments in other portions of this brief as to the frailty and insufficiency of that evidence need not be repeated here. Suffice it to say that the Government is relying as to the conspiracy count, upon a number of isolated, disconnected and irrelevant transactions and acts not even tending to prove any agreement among the alleged conspirators for the purpose of defrauding the United States of income taxes allegedly due from Johnson for the years in question.

II.

IN THE CIRCUMSTANCES OF THIS CAUSE PROOF OF THE PURPORTED AMOUNTS OF CHECKS CASHED AND CURRENCY EXCHANGED (WHICH WAS THE ONLY EVIDENCE OFFERED AS TO GROSS RECEIPTS) WAS NOT SUFFICIENT TO ESTABLISH THAT EITHER NET INCOME OR GROSS INCOME RESULTED FROM THE OPERATIONS OF ANY ENTERPRISE IN WHICH JOHNSON IS ALLEGED TO HAVE BEEN INTERESTED.

It has heretofore been demonstrated that the alleged amounts of checks cashed and currency exchanged at the various currency exchanges and banks does not establish gross income or gross receipts to any one or to all of the gambling houses (*supra* pp. 36-46). There was not, therefore, any substantial evidence which warranted the submission by the trial Court to the jury of the charges made against each of the co-respondents on either the substantive counts or the conspiracy count. Certainly, if the violent assumption be made that the spot-checked amounts of

checks cashed and currency so exchanged does constitute evidence of gross *receipts*, it is clear that in the circumstances of this case, proof of such gross receipts did not establish the amount of *net* income from the operations of any one or from all of the gambling houses.

The Government has urged in support of its contention, that had there not been profits the enterprises would not have remained in operation for the period which they did because of the risk involved. In answer to that general and vague argument one need only call attention to the well-known daily phenomena of our economic order in which enterprises continue in operation for several years without a net profit, and where the risk involved is greater than here. Risk? Certainly the Government cannot mean financial risk, for there was, as we have elsewhere demonstrated, a percentage in favor of the house, and thus the size of income depended upon the gross of money handled. True, the overhead was large, and the net returns were not staggeringly large—but men who started with a \$5,000 bankroll could double it in a year. But risk? It was the customers' money which paid the way. No fortunes were invested, by any of the gamblers, to initiate a gambling house. The record shows that the bankroll was \$5,000. Hundreds of thousands of dollars of *other* peoples money might have been wagered, but that was no "risk" to the proprietor. If the Government implies risk of running afoul of the local and State gambling laws, we point to the small fines—a maximum of \$200 if tried and convicted for gambling. The Cook County public was most tolerant of gambling and there were no convictions we know of, during the years in question. If that is *dehors* the record, so is the Government's "risk" improvisation.

Recognizing the frailty of such an approach in seeking to sustain criminal convictions, the Government seeks to

rely upon the fact that to some extent \$100 bills were received in exchange for checks and currency along with currency of smaller denominations. The Government argues that this fact has special significance and establishes that the amounts of currency received in cashing checks and in exchange for other currency constitutes net income.

First, it is to be observed that while the Government in its brief at page 83 states that the "major part" of the currency received on the cashing of checks and the exchange of other currency was the form of one hundred dollar bills, the Government's brief at pages 54 and 55 establishes that only a small portion of the currency received in exchange for other currency was in one hundred dollar bills. For example, of the currency exchanged at the Northern Trust Company, which is alleged to constitute over \$300,000 for the period in question, only 14%, at most, was in one hundred dollar bills (3 R. 604-605).

After this misstatement of fact, the brief of the Government at page 84 then seeks to prove a conclusion from a premise by assuming the conclusion in the premise. The cashing of checks and the exchange of currency in part for one hundred dollar bills is asserted to be the respondent's method of segregating *net* profits. This segregation is then *asserted* to be the equivalent of bank deposits and *ergo* as bank deposits such cashing of checks and exchange of currency are said to be sufficient evidence to raise a jury question as to *net* profits.

Not only is the presence of *some* one hundred dollar bills urged to prove that *all* of the currency received in exchange for other currency and for checks constitutes gross income, but likewise net income. The facts as established by the record are apparently again inadvertently overlooked here, in the Government's argument as to net

profits, just as they were overlooked in the Government's argument as to gross receipts.

The fact is that the one hundred dollar bills were used almost exclusively to pay winnings over that amount (3 R. 792-793, 795, 879, 939). The fact is that whenever a customer ended his play, loser or winner, he would be asked to turn in the small denominations which he might have in exchange for one hundred dollar bills. A principal source for the small denominations used for play on tables (and according to the Government's brief (Page 86), for the payment of employee's wages) were the customers who were given one hundred dollar bills in exchange for smaller denominations (3 R. 792, 795, 879). The fact is that with the relatively small percentage in favor of the house (*supra*, page 47) the total amount of currency handled would be great and the amount of winnings paid off in hundred dollar bills would be great. The fact is that such expenses as rent, horse racing service and the numerous other expenses, each individual item of which clearly exceeded one hundred dollars, were not likely to be paid in one dollar and five dollar bills but were more likely to be paid in one hundred dollar bills. These facts demonstrate that the receipt of one hundred dollar bills, along with money in smaller denominations, upon the exchange of other currency and the cashing of checks, does not constitute proof that the amount of currency exchanged and checks cashed was the amount of either gross or net income from the operation of any or all of the gambling houses.

At page 85 of its brief, the Government argues that since the currency exchange transactions took place during the day and the gambling and horse race betting took place in the afternoon, evening and early morning hours, and since the losses of the gambling houses were paid to its

customers upon the conclusion of a particular bet in a money game, or upon the conclusion of the customer's play in a check (chip) game, it follows that the amounts of currency exchanged and checks cashed represented *not* profits to the gambling houses.

Again, this argument fails to take into account the facts established by the record. The Government's brief has recognized that most of the currency exchange represented working money. Even under the Government's interpretation of the facts, the greatest part of the currency exchanged represented neither gross nor net income but merely a turn-over of working money. Further, the fact is that the checks were cashed to furnish customers with money for play and to accommodate customers and others. The fact that the currency exchange transactions took place when they did supports the contention that by these transactions the gambling houses were *not* segregating net income, but on the contrary were replenishing their currency which was indispensable to the operation of the gambling business. After a day's business the currency resources of the gambling houses were depleted by the cashing of checks to provide money for play and to accommodate customers (and others) with money for personal use. It is to replace this currency that the checks were in turn cashed by the gambling houses. Likewise, it was necessary to convert by the exchange of currency the old worn out money used in play for new money.

The Government's brief, at pages 85 and 86, contends that the limitation on the size of individual bets and the odds in favor of the house made it "highly improbable" that a gambling house's losses for any particular day would be in excess of its winnings. The Government then seeks to make this assumption support its conclusion that the amounts of currency exchanged and checks cashed represented net income. The known percentages in favor of

the gambling houses at *most* were 5-5/19ths% (*supra*, page 47). Nothing in the laws of probability make it "highly probable" that the winnings of a house on any particular day would exceed its losses. Nor is there anything in the laws of probability which makes it "highly probable" that the houses were always winners on the days preceding currency exchange transactions, as the Government assumes in making its contention that the currency exchange transactions for each and every day represented net profits during the period in question.

One of the principal sources for currency of smaller denominations was the customers who, be they winners or losers, were asked to turn in their smaller currency in exchange for the larger denominations (3 R. 792, 795, 879). Moreover, by far the greater portion of the currency received in exchange for other currency was in smaller denominations which obviously could be used in the payment of employees' wages as well as for play.

The Government concedes that with respect to all expenses in the operation of the gambling houses, other than wages and losses to customers, there is no proof that their payment preceded the alleged segregation of gambling receipts through the currency exchange transactions. The alleged amounts of these numerous items of expense, which the Government concedes were substantial, are in many instances arrived at by conjecture. For example, telephone charges, utility bills for gas, light and the like, and moving storage expenses, are summarily dismissed from consideration by the statement in a footnote on page 90 of the Government's brief to the effect that the jury could reasonably conclude that such expenses were within "normal limits." Predicated upon such conjecture, the Government seeks to sustain its contention that all of the amounts of currency exchanged and checks cashed constitute the *net* income of the gambling houses.

To recapitulate, the Government's answer to the Court's second question when stripped of verbiage takes this form:

1. It *assumes* that the income tax returns of the co-respondents failed to reflect the gross amount of currency exchanged and checks cashed by the currency exchanges, and
2. That the currency exchange transactions reflect with substantial accuracy the income of the gambling houses of the co-respondents Sommers, Hartigan and Kelly, and
3. That the co-respondents could not have been satisfied with their reported incomes because of some supposititious risk, and
4. That \$100 bills exchanged are tantamount (if and when segregated and hidden in secret and also supposititious vaults) to deposits, and
5. That the exchange for *some* \$100 bills proves that *most* of the currency exchanged and checks cashed took the form of \$100 bills (easy to hide, guesses the Government; \$500 bills would be easier), and
6. That since currency exchange transactions took place in the daytime and play took place both in the daytime and evening, the currency exchange transactions represented *net* profits—to the gambling houses, and
7. That it was "highly improbable" that the gambling houses' losses would exceed winnings in any day and, finally,
8. That having met the payroll, the currency exchanged and checks cashed just must have been net profit and net income.

We believe that we (and the record) have answered this ingenious supplantation of argument for evidence.

CONCLUSION.

The co-respondents are not required to answer Questions 3 and 4, either as directed by the Court or as set forth in the Government's brief. These questions deal with the respondent Johnson's expenditures and the Government's theory in that behalf. There is nothing in that expenditure theory which could possibly reflect on any of the co-respondents, either as to the substantive counts or as to the conspiracy count.

Whatever there may have been which impelled the conviction of these co-respondents in the trial Court, whether it was the dangling before the jury of the large amounts of dollars that passed through these co-respondents' hands, or the permeation of the atmosphere with the illegal business with which they were connected, or merely the masterful work of the prosecutor, nevertheless the cold, careful scrutiny of the Circuit Court of Appeals pierced the jumbled mass of testimony. The majority of that Court declared that it had no hesitancy in holding that the verdict could not be supported on the ownership-income theory of the Government. That Court characterized the Government's attempt to predicate taxable income upon the violent assumption of the currency exchange theory that a revolving fund equals income, plus the assumption of ownership of the gambling houses in Johnson, as "rank speculation."

We respectfully urge that the judgments of the Circuit Court of Appeals, which reversed the judgments of the

District Court, as to these co-respondents, and each of them, be affirmed.

Respectfully submitted,

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6 p. 8, 9, 12

SUPREME COURT OF THE UNITED STATES.

Nos. 4 and 5.—OCTOBER TERM, 1942.

The United States of America,
Petitioner,

4

vs.

William R. Johnson.

The United States of America,
Petitioner,

5

vs.

Jack Sommers, James A. Hartigan,
John M. Flanagan, William P. Kelly
and Stuart Solomon Brown.

On Writs of Certiorari
to the United States Cir-
cuit Court of Appeals
for the Seventh Circuit.

[June 7, 1943.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

This is an indictment in five counts. Four charge Johnson with attempts to defraud the income tax for each of the years from 1936 to 1939, inclusive, and charge a dozen others with aiding and abetting Johnson's efforts. The fifth count charges Johnson and the others with conspiracy to defraud the income tax during those years. The substantive counts charge violations of the penal provisions of the Revenue Acts of 1936 and 1938, now embodied in general form in § 145 (b) of the Internal Revenue Code, 53 Stat. 63, 26 U. S. C. § 145 (b). The conspiracy count is based on the old § 5440 of the Revised Statutes, which later became § 37 of the Criminal Code, 35 Stat. 1096, 18 U. S. C. § 88.

As to four of the defendants, the cause was dismissed upon motion of the United States Attorney; three others were acquitted by the jury. Of the six remaining defendants, the jury brought in a verdict of guilty on all five counts against Johnson, Sommers, Hartigan, Flanagan, and Kelly, and against Brown on counts three and four, the substantive counts for the years 1938 and 1939, and on the conspiracy count. The district court imposed on Johnson a sentence of five years on each of the first four counts and of two years on the conspiracy count, as well as a fine of \$10,000

on each of the five counts. The terms of imprisonment were to run concurrently and the payment of \$10,000 would discharge all fines. Lesser concurrent sentences and fines were imposed on the other defendants.

The Circuit Court of Appeals reversed the judgments. Its holding undermined the entire prosecution in that it found the indictment void because it was returned by an illegally constituted grand jury. But it went beyond that major ruling. It found the four substantive counts of the indictment, in so far as they charged defendants as aiders and abettors, fatally defective. Proceeding to the merits, the court held that the case properly went to the jury against Johnson on the last four counts and that the evidence sustained the verdict against all the defendants on the conspiracy count, but that a verdict should have been directed for Johnson on the first count and for the other defendants on all but the conspiracy count. Finally, it found that the testimony of an expert accountant for the government invaded the jury's province and that its admission was prejudicial error. 123 F. 2d 111. Judge Evans dissented on all points. He found no infirmities in the indictment or in the rulings by the trial judge, and thought that the case was properly committed to the jury. *Id.*, 128. On rehearing, the Circuit Court of Appeals adhered to its views, but withdrew an erroneous part of its grounds for deeming admission of the expert accountant's testimony to be prejudicial. 123 F. 2d 142. We brought the case here because it concerns serious aspects of federal criminal justice. 315 U. S. 790.

Inasmuch as the initiation of prosecution through grand juries forms a vital feature of the federal system of criminal justice, the law governing its procedures and the appropriate considerations for determining the legality of its actions are matters of first importance. Therefore, in deciding that the defendants were held to answer for an infamous crime on what was merely a scrap of paper and not "the indictment of the Grand Jury" as required by the Fifth Amendment, the lower court went beyond that which relates to the special circumstances of a particular case. Unlike most of the other rulings below, the court here dealt with a matter of deep concern to the administration of federal criminal law. At the root of the court's decision is its finding that an order extending the life of the grand jury was void, and that the indictment was therefore returned by a body not lawfully empowered

to act. A brief history of the proceedings which led to the filing of this indictment in open court on March 29, 1940, is therefore essential.

Terms of court of the District Court for the Eastern Division of the Northern District of Illinois are, by statute, fixed for the first Monday in February, March, April, May, June, July, September, October, and November, and on the third Monday in December. 28 U. S. C. § 152. This grand jury was impaneled at the December 1939 term of the district court, and was therefore empowered to sit through January 1940. By an order, the validity of which is undisputed, its life was continued into the February term. And on February 28, 1940, the district court authorized a further continuance of this grand jury during the March 1940 term. This is the order which gives rise to the controversy, for upon its legality depends the validity of the indictment thereafter returned by the grand jury. The disputed order reads as follows:

"Now comes the Second December Term 1939 Grand Jury for the Northern District of Illinois, Eastern Division, by Dorothy W. Binder, Forewoman, and in open Court requests that an order be entered authorizing them, the said Second December, 1939 Grand Jury, heretofore authorized to sit during the February 1940 Term of this Court, to continue to sit during the Term of Court succeeding the said February Term of Court, to-wit, the March 1940 Term of Court, to finish investigations begun but not finished by said Grand Jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished during the said February 1940 Term of Court; and the Court being fully advised in the premises,

"It Is Therefore Ordered That the Second December 1939 Grand Jury, now sitting in this Division and District, be, and it is hereby authorized to continue to sit during the March 1940 Term of Court for the purpose of finishing said investigations."

The Court below construed this order as authorizing the grand jury to sit during March to enable it to finish investigations begun in February, while under the governing statute, § 284 of the Judicial Code, 28 U. S. C. § 421, it could be authorized only "to finish investigations begun but not finished by such grand jury" during its original term, *i. e.*, the December 1939 term. So to read the order, however, is to dissociate language from its appropriate function and to disregard the historic rôle of the grand jury in our federal judicial system. Since the law permits a continuance of the grand jury "to finish investigations" begun

during its original term, the most elementary requirement of attributing legality to judicial action should, unless violence is done to English speech, lead to a reading of the order of February 28 so as to restrict the grand jury to that which it legally could do instead of to an expansive reading making for illegality.

The foundation for the holding that the order extending the grand jury into the March term purported to give authority in defiance of the statute is the phrase in the order reciting the grand jury's request that it be authorized to continue its sitting during the March term "to finish investigations begun but not finished by said grand jury during the said December 1939 and the said February 1940 Terms of this Court, and which said investigations cannot be finished during the said February 1940 Term of Court." The Circuit Court of Appeals read this to mean that the grand jury requested a continuance into the March term to finish investigations begun in the February as well as in the original December term. But surely the recital "to finish investigations begun but not finished by said grand jury during the said December 1939 and the said February 1940 Terms", is, at the worst, dubious as to what was begun and what was finished. Judge Evans rightly resolved the ambiguity by reading the disputed language "during the said December 1939 and the said February 1940 Terms" as qualifying "finished" rather than "begun", and therefore meaning that the grand jury was unable to finish during the December and February terms that which it had begun when it first came into being in the December term. Such a rendering makes good English as well as good sense. To read it as the court below read it is to go out of one's way in finding that the judge who granted the order of extension either wilfully or irresponsibly did a legally forbidden act, namely, to allow a grand jury to sit beyond the term and take up new instead of finishing old business. For the legal limitations governing extension of the life of a grand jury do not lie in a recondite field of law in which a federal district judge may easily slip. Certainly every district judge in a great metropolitan center like Chicago knows that in authorizing a grand jury to continue to sit "for the purpose of finishing" their "investigations", the "investigations" must have been begun during the grand jury's original term and that new domains of inquiry may not thereafter be entered by the grand jury.

The failure of the court below to recognize the essential function of the grand jury in our system of criminal justice is revealed by its subsidiary argument in regard to the fourth count. Since that charges an attempted evasion of Johnson's taxes for the year 1939, and since such an attempt could not have become manifest prior to the filing of his return on March 15, 1940, the court reasoned that the "investigation" into this charge necessarily could not have been begun prior to the March term and that it therefore constituted a "new" investigation. Such a view misconceives the duties and workings of a grand jury. It is invested with broad investigatorial powers into what may be found to be offenses against federal criminal law. Its work is not circumscribed by the technical requirements governing the ascertainment of guilt once it has made the charges that culminate its inquiries. A grand jury that begins the investigation of what may be found to be obstructions to justice or passport frauds or tax evasions opens up all the ramifications of the particular field of inquiry. Its investigation in such cases may be into a course of conduct continuing during, and perhaps even after, its inquiry. And Congress certainly did not restrict a grand jury in dealing with all crimes disclosed by its investigation. The very purpose of the Act of February 25, 1931, 46 Stat. 1417, 28 U. S. C. § 421, allowing grand juries to continue investigations beyond the arbitrary periods that constitute terms of court in the various federal districts, was to make the grand jury a more continuous and therefore more competent instrument of what have become increasingly more complicated inquiries into violations of the enlarged domain of federal criminal law. That Congress did not have a restrictive view of the "investigations" which a grand jury was authorized to pursue to completion beyond its original term is emphasized by the Act of April 17, 1940, 54 Stat. 110, amending the Act of 1931, *supra*. Under the original Act a grand jury was not permitted to sit "during more than three terms". But since the terms of court are of varying duration, a fact to which the attention of Congress was directed by the experience particularly in the Southern District of New York, Congress extended the potential life of a grand jury from "three terms", which in some districts might be only three months, to "eighteen months". The considerations which induced Congress to enlarge still further the already ample scope of grand jury investigations and the manner in which the House committee report

spoke of a grand jury's work, see H. Rep. No. 1747, 76th Cong., 3d Sess., are but confirmation that that for which a grand jury may continue its sitting is the general subject-matter on which it originally began its labors. It is not forbidden to inquire into new matters within the general scope of its inquiry but only into a truly new, in the sense of dissociated, subject-matter.

One can hardly conceive of a clearer case of a continuing investigation of an old subject-matter than that presented here. The grand jury in December 1939 began investigation into alleged tax evasions by Johnson. It was allowed to continue its sitting during the February term, and its authority was further extended to permit it to sit during March. The grand jury found a systematic practice of tax evasion over a course of years, and yet, so we are urged, it could not continue to ferret out one more phase of this continuous course of fraudulent conduct because that did not ripen into a separate offense until the last term of the grand jury's sitting. So to hold is to make of the grand jury a pawn in a technical game instead of respecting it as a great historic instrument of lay inquiry into criminal wrongdoing. See *Hale v. Henkel*, 201 U. S. 43, 65; *Blair v. United States*, 250 U. S. 273, 282; *Cobbledick v. United States*, 309 U. S. 323, 327.

By way of reinsurance of its main basis for invalidating the indictment, the Circuit Court of Appeals relied on a wholly different line of argument from that which we have just rejected. It held that the preliminary motions, by which the defendants sought to quash the indictment because of the grand jury's illegality, raised issues of fact. It therefore found that the district court, instead of granting the government's motion to strike the pleas in abatement, should have put the government to answer. The indictment itself alleged that the grand jury "having begun but not finished during said December Term . . . an investigation of the matters charged in this indictment, and having continued to sit by order of this Court . . . during the February and March Terms . . . for the purpose of finishing investigations begun but not finished during said December Term. . . ." The court below was apparently of the view that a mere denial of such a solemn allegation by the grand jury puts its truth in issue, that the burden is upon the government "to support it with proof", and that failure to vindicate the authority of the grand jury is "fatal". Assuming that under any circumstances a grand jury's allegation that the indictment which it

returns was the outcome of an investigation "begun" during its original term and was not a forbidden new investigation "begun" during an extended term, within the meaning of § 284 of the Judicial Code, 28 U. S. C. § 421, presented a traversable issue, the circumstances that could raise such an issue would indeed have to be extraordinary and the burden of establishing it would rest heavily on defendants. Compare *Roche v. Evaporated Milk Ass'n.*, No. 584, this Term, decided May 3, 1943.

Were the ruling of the court below allowed to stand, the mere challenge, in effect, of the regularity of a grand jury's proceedings would cast upon the government the affirmative duty of proving such regularity. Nothing could be more destructive of the workings of our grand jury system or more hostile to its historic status. That institution, unlike the situation in many states, is part of the federal constitutional system. To allow the intrusion, implied by the lower court's attitude, into the indispensable secrecy of grand jury proceedings—as important for the protection of the innocent as for the pursuit of the guilty—would subvert the functions of federal grand juries by all sorts of devices which some states have seen fit to permit in their local procedure, such as ready resort to inspection of grand jury minutes. The district court was quite within its right in striking the preliminary motions which challenged the legality of the grand jury that returned the indictment. To construe these pleadings as the court below did would be to resuscitate seventeenth century notions of interpreting pleadings and to do so in an aggravated form by applying them to the administration of the criminal law in the twentieth century. Protections of substance which now safeguard the rights of the accused do not require the invention of such new refinements of criminal pleading.

Another ruling of general importance in the law of criminal pleading was made by the Circuit Court of Appeals. It will be recalled that the first four counts charge Johnson with attempts to defraud the revenue, and that the other defendants are in the same counts charged as aiders and abettors of Johnson. The court below ruled that a demurrer of the defendants other than Johnson to those four counts should have been sustained. It found that these counts were, as to the co-defendants, both inconsistent and duplicitous. They were deemed inconsistent in that the offenses against Johnson were charged as of March 15th of each year, whereas the co-defendants "as aiders and abettors are

charged with an offense which extended over a period of years". They were deemed duplicitous in that the co-defendants were in each count charged with conduct that aided and abetted Johnson both before and after March 15th of the relevant year, and were therefore, in the court's view, charged in the same count as accessories both before and after the fact.

We are constrained to say that the court was led into error by a misreading of the statutes which underlie these counts and the allegations which laid the offenses. The basis of each of the four counts, we have noted, is a penal sanction in successive revenue laws, now generalized by the provision in the Internal Revenue Code, 53 Stat 63, 26 U. S. C. § 145(b), which makes it a felony for any person who, being subject to the income tax, "willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof". Section 332 of the Criminal Code (18 U. S. C. § 550) makes every person who "directly commits any act constituting an offense defined in any law of the United States or aids, abets, counsels, commands, induces, or procures its commission" a "principal". The vice of the lower court's ruling is its misconception of the nature of the offense defined by § 145(b) with which Johnson is charged, as well as that of the relation of aiders and abettors, made principals by § 332 of the Criminal Code to such an offense. In short, the Circuit Court of Appeals read the substantive counts as though they charged Johnson with the filing of false returns on March 15th. That ~~is made an offense~~ *under* a misdemeanor ~~by~~ § 145(a) of the Internal Revenue Code, but that is not the offense with which Johnson was charged. He was charged with a felony made so by § 145(b), the much more comprehensive violation of attempting "in any manner to defeat and evade" the payment of an income tax. The false return filed on March 15th was only one aspect of what was a process of tax evasion. And all who contributed consciously to furthering that illicit enterprise aided and abetted its commission and thereby, under § 332 of the Criminal Code, became principals in the common enterprise. Therefore, non-participation in merely one phase of Johnson's attempted evasion, namely, the filing of a false return on March 15th, is in itself irrelevant, and it is equally irrelevant that the aid which the co-defendants gave Johnson continued after March 15th as well as preceded it. The crime of each of the first four counts is the wilful attempt to evade the payment of

merely
may only be

what was due to the revenue. All who participated in that attempt were contributors to the illicit enterprise. There was only one offense in each count, and all who shared in its execution have equal responsibility before the law, whatever may have been the different rôles of leadership and subordination among themselves. There is neither inconsistency nor duplicity in these four counts and the demurrers to them were properly overruled.

There remain only questions pertinent to this ~~particular~~ case, and more particularly whether the evidence warranted leaving the case to the jury. This was a six weeks' trial of which the record, even in the abbreviated form used on appeal, runs over a thousand printed pages. We have painstakingly examined it all, but it would be unprofitable to give more than the barest outline of what went to the jury. The details sufficiently appear from the two opinions below.

Johnson was a gambler on a magnificent scale. The income which he himself reported from winnings for one of the years in question exceeded a quarter of a million dollars. The lowest annual income so reported for the period is more than \$100,000. His ~~other~~ co-defendants were plainly smaller fry in Chicago's gambling world. Their reported annual gambling income during the same period ranged from \$3,600 to \$19,000. Concededly Johnson frequented some half-dozen gambling houses, ostensibly separately owned by the others found guilty, excepting only Brown who was the nominal owner of a so-called currency exchange which furnished private banking facilities for these gambling houses. Indisputably, also, Johnson had a continuous and close relation to these gambling houses. The decisive issue of fact was whether Johnson's relation to these so-called gambling clubs was that of a patron or of a proprietor. The testimony both for the government and for the defendants focussed on that question. During the course of his extensive testimony, Johnson himself put simply and completely the only real problem before the jury when he swore that he "never had any financial interest in any gambling Club operated by any of the defendants".

The jury decided this central issue against Johnson. And the argument that there was not enough evidence on which a jury was entitled to make such a finding does not call for extended discussion. In making this ultimate finding the jury must have found that the string of gambling houses with which Johnson was associated over a period of years, while ostensibly conducted as separate enterprises by his co-defendants in separate owner-

ship, was in fact a single unified gambling enterprise. A voluminous body of lurid and tedious testimony, often through obviously unwilling witnesses, amply justified the jury in finding that these pretended separate houses were under a single domination. The testimony also amply justified the conclusion that Johnson owned a proprietary interest in this network of gambling houses and was not merely a patron or an occasional accommodating dealer when other patrons desired to play for stakes beyond the conventional limit. Having been justified in finding that the individual defendants were screens behind which Johnson operated, the jury was also justified in finding that there were winnings from these houses on which Johnson attempted to evade income tax payments. Even such records as were kept in these houses were destroyed. But that these gambling transactions were on an enormous scale was overwhelmingly established. It is not to be expected that the actual financial transactions of such a vast illicit business would appear by direct proof. Compare *United States v. Werber*, 79 F. 2d 526. The long duration of this gambling business, the substantial evidence of the operation of the law of probability in favor of the houses, such records as there were pertaining to the private banking facilities and currency exchanges, which were at the service of these houses, made it not a matter of remote speculation but of justifiable proof that there were winnings of a substantial amount which Johnson did not report.

That he had large, unreported income was reinforced by proof which warranted the jury in finding that certainly for the years 1937, 1938, and 1939, the private expenditures of Johnson exceeded his available declared resources. It is on this latter ground—namely, that presumably Johnson's expenditures justified the finding that he had some unreported income which was properly attributable to his earnings from the gambling houses—that the court below thought that the evidence on three of the substantive counts, those for 1937, 1938, and 1939, were sufficient to go to the jury. That is enough to sustain the judgment against Johnson, for the sentences on all the counts were imposed to run concurrently.

Of course the government did not have to prove the exact amounts of unreported income by Johnson. To require more or more meticulous proof than this record discloses that there were unreported profits from an elaborately concealed illegal business, would be tantamount to holding that skilful concealment is an invincible barrier to proof. . . . the probative sufficiency of

the testimony has the support of the District Court (on which is included the verdict of the jury) and of the Circuit Court of Appeals. It would take something more than ingenious criticism to bring even into question that concurrence or to detract from its assuring strength—something more than this record presents." *Delaney v. United States*, 263 U. S. 586, 589-90. And this consideration--the concurrence of both courts below in the sufficiency of the jury's verdict--renders unnecessary further discussion

the verdict against all the defendants, including Brown, on the conspiracy count. For while Brown was also convicted on two substantive counts, the conspiracy charge is sufficient to absorb his sentence.

Not many words are needed to dispose of the question of the sufficiency of the evidence to warrant submission to the jury of the substantive counts against the other aiders and abettors, Sommers, Hartigan, Flanagan, and Kelly. In holding that the motion for directed verdicts on the counts charging aiding and abetting should have been granted, the court below was largely misled by its erroneous conception, with which we have already dealt, of the crime of aiding and abetting in the circumstances of this case. In other words, as a matter of evidence as well as a matter of pleading, the court was dominated by the notion that the co-defendants did not aid and abet Johnson if they actually did not share in the making of his false return on each March 15th. The nub of the matter is that they aided and abetted if they consciously were parties to the concealment of his interest in these gambling clubs of which they themselves pretended to be proprietors. Evidence of conduct, acts and admissions, amply warranted the trial court to send the substantive counts against the aiders and abettors to the jury.

A ruling on evidence, much pressed upon us, must finally be noticed. The court below held that the admission of the testimony of an expert witness regarding Johnson's income and expenditures during the disputed period invaded the jury's province. The witness gave computations based on substantially the entire evidence in the record as to Johnson's income. The Circuit Court of Appeals held that while undoubtedly "a proper hypothetical question could have been framed and propounded", in fact the witness was not giving answers on the basis of any assumption or hypothesis but as testimony on the "controverted issue" in the case. 123 F. 2d at 128. We do not so read the meaning of this testimony. No issue was withdrawn from the jury. The correctness or credi-

bility of no materials underlying the expert's answers was even remotely foreclosed by the expert's testimony or withdrawn from proper independent determination by the jury. The judge's charge was so clear and correct that no objection was made, though, of course, there were exceptions to the refusal to make the usual requests for charges that were either redundant or unduly particularized items of testimony. The worth of our jury system is constantly and properly extolled, but an argument such as that which we are rejecting tacitly assumes that juries are too stupid to see the drift of evidence. The jury in this case could not possibly have been misled into the notion that they must accept the calculations of the government expert any more than that they were bound by the calculations made by the defense's expert based on the defendants' assumptions of the case. So long as proper guidance of a trial court leaves the jury free to exercise its untrammelled judgment upon the worth and weight of testimony, and nothing is done to impair its freedom to bring in its verdict and not someone else's, we ought not be too finicky or fearful in allowing some discretion to trial judges in the conduct of a trial and in the appropriate submission of evidence within the general framework of familiar exclusionary rules.

The decision below must therefore be reversed and the cause remanded to the Circuit Court of Appeals for proper disposition in accordance with this opinion.¹

Reversed.

Mr. Justice ROBERTS concurs in that portion of the opinion which deals with the validity of the indictment. He is of opinion that the judgment of the Circuit Court of Appeals should be affirmed because, in the case of Johnson, substantial trial errors in the admission of evidence operated to his prejudice, and, in the case of the other defendants, because there was no evidence whatever to prove that they aided or abetted Johnson in any effort to commit a fraud upon the revenue and none to prove that they were parties to a conspiracy with him having the same object.

Mr. Justice MURPHY, Mr. Justice JACKSON and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

¹ After the case came here, the Government asked that the petition as to Flanagan, who had died, be dismissed. Accordingly, we dismiss the writ as to Flanagan and leave the disposition of the fine that was imposed on him to the Circuit Court of Appeals. See *United States v. Pomeroy*, 152 Fed. 279, reversed in 164 Fed. 324.

